

BEFORE THE DEPARTMENT OF WATER RESOURCES
OF THE STATE OF IDAHO

IN THE MATTER OF DISTRIBUTION OF WATER)
TO WATER RIGHT NOS. 36-02356A, 36-07210,)
AND 36-07427 (BLUE LAKES),)

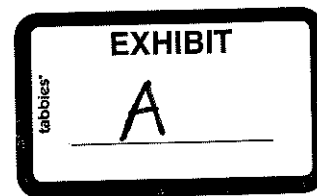
and)

IN THE MATTER OF DISTRIBUTION OF WATER)
TO WATER RIGHTS NOS. 36-04013A, 36-04013B)
and 36-07148 (SNAKE RIVER FARM); AND)
TO WATER RIGHTS NOS. 36-07083 AND)
36-07568 (CRYSTAL SPRINGS FARM).)

TRANSCRIPT OF HEARING

JUNE 5, 2006

BOISE, IDAHO



ACCURATE COURT REPORTING, INC.

P.O. Box 140218

Boise, Idaho 83714-0218

(208) 938-0321 • FAX (208) 938-1843

COPY

Prepared for

Daniel V. Steenson

Reported By

Jeanne M. Hirmer, CSR, RPR

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A P P E A R A N C E S (Continued)

For Idaho Department
of Water Resources:

OFFICE OF THE ATTORNEY GENERAL
By: Clive J. Strong
Deputy Attorney General
Natural Resources Section, Chief
210 Statehouse
Boise, Idaho 83702

Also present:

Charles M. Brendecke, Ph.D., PE
Hydrosphere, President
1002 Walnut
Suite 200
Boulder, Colorado 80302

Brockway Engineering, PLLC
2016 Washington Street North
Suite 4
Twin Falls, Idaho 83301

Karl Dreher, Director, IDWR
Tim Luke, IDWR
Allan H. Wylie, Ph.D., IDWR
Cindy Yenter, IDWR
Will Fletcher, IDWR

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A P P E A R A N C E S

1
2
3 For North Snake GIVENS, PURSLEY, LLP
4 Groundwater District, Attorneys at Law
5 Magic Valley Groundwater By: Jeffrey C. Fereday
6 District, and Groundwater and Brad V. Sneed
7 Appropriators, Inc.: 601 Bannock Street
Suite 200
Boise, Idaho 83702
8
9
10 For Clear Springs BARKER, ROSHOLT & SIMPSON, LLP
11 Foods: Attorneys at Law
By: John K. Simpson
205 North 10th
Suite 520
Boise, Idaho 83702
12
13
14 For Blue Lakes Trout RINGERT CLARK, CHARTERED
15 Company: Attorneys at Law
By: Daniel V. Steenson
455 South Third
Boise, Idaho 83702
16
17
18 For Idaho Department OFFICE OF THE ATTORNEY GENERAL
19 of Water Resources: By: Phillip J. Rassier
and Chris M. Bromley
Deputy Attorney Generals
Idaho Department of Water Resources
322 East Front Street
Boise, Idaho 83702
20
21
22
23
24
25

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BOISE, IDAHO, MONDAY, JUNE 5, 2006, 9:30 A.M.

MR. DREHER: Good morning. I'm Karl Dreher, Director of the Idaho Department of Water Resources, and I'll be presiding over the hearing this morning. The hearing is being conducted at the main office of the Idaho Department of Water Resources, 322 East Front Street, Boise, Idaho, on June 5th, at about 9:30 a.m.

Some other Department staff and representatives are present. Mr. Tim Luke, Dr. Allan Wylie, and Ms. Cindy Yenter are Department staff here today. Also, with me is Mr. Phil Rassier, who's the principle Deputy Attorney General serving as counsel for the Department; Chris Bromley, another Deputy Attorney General assigned for the Department; and an extern that's joining us for the summer, Will Fletcher, who's sitting in the back.

The purpose of this hearing this morning is to receive evidence and testimony relative to whether I should modify my prior Orders approving the Idaho Groundwater Appropriators' 2005 substitute curtailments in response to both the Blue Lakes delivery call and the Clear Springs delivery call for its Snake River farm facilities. Those Orders were issued on April 29th, 2006.

And for the limited purpose of considering

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whether those Orders should be amended or revised, we have brought both of these matters together. However, they remain separate contested cases, and the record of this hearing will be incorporated into both those matters.

The hearing is being conducted in compliance with applicable provisions of Chapters 2 and 17 of Title 42, Idaho Code, as well as Chapter 52, Title 67, Idaho Code, and the Department's rules and procedures.

Just joining us now is Mr. Clive Strong, who is the Deputy Attorney General, Chief of the Natural Resources Section in the Attorney General's Office.

With that, I would ask that the parties make their appearance, beginning with Mr. Fereday.

MR. FEREDAY: Jeff Fereday, Mr. Director, on behalf of North Snake and Magic Valley Groundwater Districts; also, the Idaho Groundwater Appropriators here today. And with me at counsel table is Dr. Charles Brendencke of Hydrosphere Resource Consultants from Boulder, Colorado. Also, joining me is my associate, Brad Sneed.

MR. DREHER: Okay.

MR. STEENSON: Dan Steenson representing Blue Lakes Trout.

MR. SIMPSON: John Simpson representing Clear Springs Foods.

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1 MR. DREHER: All right. And I believe that's
2 all the parties in attendance. The only stipulation that
3 we have to deal with has to do with the entrance of eight
4 exhibits, and it's my understanding that the parties have
5 stipulated to the offering and entrance of those eight
6 exhibits.
7 With that --
8 MR. SIMPSON: (Inaudible response.)
9 MR. DREHER: Is that correct, Mr. Simpson?
10 MR. SIMPSON: Yes.
11 MR. DREHER: Okay. Mr. Fereday, is that
12 correct?
13 MR. FEREDAY: That's correct, Mr. Director.
14 MR. DREHER: Okay. And Mr. Steenson?
15 MR. STEENSON: Right.
16 (Exhibit Nos. 1 through 8 were
17 admitted into evidence.)
18 MR. DREHER: All right. Okay. Do you have
19 any opening statements that you wish to make, Mr. Fereday?
20 MR. FEREDAY: Yes, Mr. Director, just a few
21 brief comments to open. The two groundwater districts,
22 Magic Valley and North Snake, that are involved in these
23 delivery calls and are subject to your Orders, have made a
24 number of efforts over the last number of years, at least
25 dating back to 2002, to attempt to curtail groundwater

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1 claimed credit. It provides direct benefit to Blue Lakes
2 and Clear Springs. It can be modeled. And it's supported
3 by documentation from Water District 01, we believe, and
4 from Northside Canal Company; the means of delivery of
5 these waters to the area. The seepage losses are important
6 to us. We believe that the Department should take another
7 look at those.

8 Second, is reduced acres. We have reduced
9 many thousands of acres of groundwater pumping; sometimes
10 outright, sometimes by means of converting those acres from
11 groundwater supply to surface water supply, sometimes with
12 Northside Canal Company shares, sometimes with storage
13 water delivered through the Northside system.

14 We believe that the Department's decision to
15 disqualify those acres that were not irrigated in 2004 with
16 groundwater is going too far. These entities have been
17 attempting and have reduced groundwater-irrigated acreage
18 since at least 2002.

19 There are reasons that many acres were not
20 irrigated in 2004 with groundwater. Some of those reasons
21 are that they were being irrigated perhaps with Northside
22 shares, or were otherwise out of production. Similarly,
23 acres that were under a groundwater right that were
24 irrigated only with surface water in 2005, but not, for
25 some reason, listed in a formal conversion project.

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1 pumping in their respective areas to allow the Model to
2 demonstrate greater spring flows for the benefit of
3 Clear Springs, Blue Lakes, and others.
4 And throughout those efforts, as I hope will
5 be demonstrated today, there have been many points of
6 contact with the Department of Water Resources. And we
7 want to make it clear that we greatly appreciate what the
8 Department has done in trying to understand, along with us,
9 what these curtailments and conversions and other efforts
10 are doing with regard to the Model.

11 In particular, Cindy Yenter has been working
12 hard on this. And we're all learning. And we're putting
13 together a program that we hope will be a long-term program
14 and that can avoid litigation, provide the right kinds of
15 mitigation where and when it's needed, and allow people, to
16 the greatest degree possible, to maintain their economic
17 livelihoods.

18 Today, however, we feel that we must point out
19 that the Director's Orders have not provided credit to the
20 degree they should have for these efforts in 2005. For one
21 thing, and perhaps as a central item, the question of
22 seepage from deliveries or conversions and for other
23 efforts that these entities have carried out has not been
24 credited to them. It's a big number.

25 Seepage makes up about a quarter of our total

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1 Of course, we'll be speaking a lot of
2 conversions. Conversions are where a formerly groundwater-
3 irrigated parcel is converted temporarily or permanently to
4 irrigation with surface water. We think that there are
5 areas where the Department should take a second look, and
6 we're willing to work with the Department to make sure that
7 all the data necessary is put on the table with regard to
8 whether those areas were in a conversion project.

9 And I guess it's the small stuff -- pivot
10 corners, endguns, small acreages. We did receive some
11 credit for pivot corners, yes. We believe that there's
12 more. Endguns; we believe that disallowing most of the
13 endgun shutoffs was not appropriate. And small acreages;
14 all of these acreages are dry and are not receiving water,
15 are not causing consumptive use, and we think should be
16 credited.

17 And finally, back to the point about this
18 being a work in progress. This is a work in progress. We
19 are attempting, and have been working with Cindy and
20 others, to put together methods and systems for properly
21 tracking conversions and curtailments, and we recognize
22 that improvements need to be made there.

23 We will have a couple of our Board members
24 speak to what they have been doing there. And we also hope
25 to be able to continue the dialogue with the Department in

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1 the future on this.

2 So with that, Mr. Director, I'll call my first
3 witness, unless Mr. Steenson or Mr. Simpson would like to
4 make a comment.

5 MR. DREHER: Mr. Steenson.

6 MR. STEENSON: Just a few remarks,
7 Mr. Director. I appreciate your clarification of the scope
8 of this hearing, both prior to going on the record and
9 after, that it is limited to the reconsideration of the
10 April 29th Order. Blue Lakes and all the parties, as you
11 know, have objected to the mitigation plan and, more
12 fundamental, the mitigation -- prescription for the
13 mitigation plan that's been provided, on what fundamental
14 grounds in the petition requesting hearing last year and in
15 a subsequent filing in response to the plaintiff.

16 And as we said in our objection to the
17 requested stay, we reserve those issues. And I understand
18 from your Order that at some time in the future a hearing
19 on those matters will be scheduled.

20 I would mention, as well, that, as we all
21 know, Judge Wood has issued an Order in the Kootenai County
22 case on Friday. That Order is very long and merits a fair
23 amount of study, I think. And I believe that it needs to
24 be considered in your further scheduling and moving forward
25 with this matter. How it will affect this matter, we won't

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1 the Department in the interim. I do agree that it's a
2 lengthy opinion that deserves our attention to see how that
3 affects not only what we're doing here today but also
4 future hearings.

5 I would also state it's my understanding
6 that -- based upon your statements regarding the limited
7 scope of this hearing, that this hearing does not address
8 what constitutes the appropriate mitigation for subsequent
9 years and the accounting for such credit.

10 Clear Springs also believes there needs to
11 be -- and demands that there be some confirmation regarding
12 not only the actions taken, but also whether the mitigation
13 is actually occurring to the benefit of those parties that
14 have been determined to be injured. And that's critical,
15 in our view, regarding the approval of mitigation plans and
16 the subsequent review of mitigation plans.

17 We're also concerned, based upon previous
18 statements through informal meetings and in documents,
19 regarding the extensive time required to review mitigation
20 plans; that is, the burden on the Department and the burden
21 on the Water District employees -- in this case
22 Water District 130 employees -- about the time it takes to
23 review those plans, as to whether or not that should be a
24 Water District expenditure or an expenditure that should
25 be levied, if you will, against the party proposing

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1 all know until we study it further.

2 With regard to the points that Mr. Fereday
3 made, I only have one comment. With regard to giving
4 credit to or not giving credit to the nonuse of water
5 rights that were associated -- the usage or nonusage of
6 water rights on lands that weren't irrigated in 2004, it's
7 my understanding that the plan that was submitted by the
8 groundwater district last year was premised on the fact
9 that the acres that were not going to be irrigated in 2005
10 had to be irrigated in 2004, and you approved the plan on
11 that basis; that the idling of acres is premised on the
12 fact that those acres had to be irrigated the prior year.

13 So I'm a bit confused at this point by what
14 sounds like an argument that acres that weren't irrigated
15 in 2004 should now be taken into consideration, and I'm
16 interested to see how that shakes out.

17 And with that, Mr. Director, you can move
18 forward with the hearing.

19 MR. DREHER: Okay. Mr. Simpson.

20 MR. SIMPSON: Thank you, Mr. Director.

21 I would agree with the comments made by
22 Mr. Steenson regarding the scope of this hearing and I
23 appreciate your clarification on that.

24 We would also echo his statements regarding
25 Judge Wood's Order and its effect on further proceedings by

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1 mitigation.

2 We also believe that the Department has made,
3 in our view, a very substantial effort to document their
4 analysis. There needs to be extensive documentation on
5 what is being proposed, the actions taken, and I would
6 commend the Department for their efforts to begin that
7 documentation process; the efforts of Ms. Yenter and
8 others, and Mr. Luke, in reviewing the plan and determining
9 what documentation is required. We are in support of this.
10 We look forward to that documentation to form a basis for
11 what people review in the future.

12 With that, that's all I have at this point,
13 Mr. Director. Thank you.

14 MR. DREHER: Okay. Thank you.

15 MR. STEENSON: Mr. Director, may I make one
16 further --

17 MR. DREHER: Certainly.

18 MR. STEENSON: I assume that you -- in taking
19 notice of information in the Department files, you will
20 take notice of the shortage that Blue Lakes continues to
21 experience as you consider the matters before you here
22 today.

23 Cindy Yenter is here today, and I know she's
24 well aware of the flows. But I want to make sure it's part
25 of the record that Blue Lakes continues to be well shorted

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1 of delivery of its (inaudible) water.
2 MR. DREHER: Okay. Thank you. Before we
3 proceed with IGWA's case, I probably should say something
4 about Judge Wood's Order. Not that it matters one way or
5 another, but I got up at 4:00 yesterday morning and spent
6 the next three and a half hours reading Judge Wood's
7 decision through to the end.

8 However, my intent is to continue until told
9 otherwise -- or instructed otherwise by the Court. A
10 Judgment has not been entered. Even though Judge Wood has
11 issued his decision there has been no Judgment. And so we
12 will continue in this matter and all other indirectly
13 related matters involving the Surface Water Coalition and
14 other delivery calls that were made in 2005.

15 With that, Mr. Fereday.

16 MR. FEREDAY: We would call Cindy Yenter.

17 MR. DREHER: Ms. Yenter.

18 Ms. Yenter, would you stand and raise your
19 right hand, please.
20

21 CINDY YENTER,
22 having been duly affirmed under oath, testified
23 as follows:
24

25 MR. DREHER: Thank you. You may be seated.

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1 A. Yes.

2 Q. And with regard to the two most recent Orders,
3 the April 29th Orders issued in both the Blue Lakes and
4 Clear Springs matter, did you have input to any of the
5 numbers that went into those Orders?

6 A. Give me a moment to make sure that I'm -- I'm
7 referring to the same Order. There have been a number of
8 them. Those were the Orders approving the mitigation
9 plans; is that correct?

10 Q. That's correct. Ms. Yenter, the April 29th
11 Order on Clear Springs and the April 9th Order on
12 Blue Lakes, I think, are both a part of the record as the
13 Director has noted. And if you don't have copies, I would
14 be happy to show them to you.

15 A. No, I do. I just wanted to make sure that I
16 am speaking of the same Orders that you are.

17 I did certain analysis for these Orders, um,
18 with regard to confirmation of number of acres, uh,
19 proposed on the mitigation plan for 2005; certain
20 verifications of those acres and their eligibility.

21 Q. Okay. And I take it you're familiar with the
22 efforts by the North Snake Groundwater District, who I'll
23 sometimes refer to as "North Snake," and the Magic Valley
24 Groundwater District, who I'll sometimes refer to them as
25 "Magic Valley."

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1 Please state your full name and address for
2 the record.

3 MS. YENTER: You want my office address or
4 my home?

5 MR. DREHER: Your office address would be
6 fine.

7 MS. YENTER: My name is Cindy Yenter. My
8 business address is 1341 Fillmore Street in Twin Falls,
9 Idaho.

10
11 DIRECT EXAMINATION

12 BY MR. FEREDAY:

13 Q. Ms. Yenter, you are currently employed by the
14 Department of Water Resources as the watermaster for
15 Water District 130; isn't that right?

16 A. That's correct.

17 Q. How long have you been watermaster?

18 A. This will be, uh, the fourth year.

19 Q. Your duties include measuring and recording
20 measurements of water in ditches and canals and even wells
21 from time to time; is that right?

22 A. That's correct.

23 Q. You're familiar, I presume, with the
24 Blue Lakes and Clear Springs delivery calls that are
25 the subject matter of this matter?

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1 Is that okay with you?

2 A. That's fine.

3 Q. I assume you're familiar with North Snake and
4 Magic Valley's efforts to provide reach gain benefits to
5 the spring complexes serving Blue Lakes and Clear Springs
6 in response to these delivery calls in 2005?

7 A. Yes.

8 Q. And doesn't this involve some voluntary
9 curtailment that is actually shutting off a groundwater-
10 irrigated acre and also involve some conversions which
11 involve obtaining primarily storage to provide to those
12 groundwater-curtailed acres?

13 A. Yes.

14 Q. It was your responsibility, wasn't it, as
15 watermaster to review these offered curtailments to confirm
16 whether they actually were occurring?

17 A. Correct.

18 Q. What about the Sandy Pipeline and its
19 associated delivery pond, are you familiar with that
20 project?

21 A. I am familiar with it.

22 Q. And that's a program, isn't it, where the
23 groundwater districts provide some storage water to a pond
24 complex that then serves a pipeline that delivers water
25 down to the Billingsly Creek area?

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1 A. That is my understanding. I don't administer
2 that project.
3 Q. I'd like you to refer to Exhibits 1 and 2,
4 Ms. Yenter.
5 Those are respectively the December 2005, and
6 a January 2006, memo each authored by you; is that correct?
7 A. Correct.
8 Q. And those bear on this matter, don't they?
9 A. Yes.
10 Q. Okay. We probably will be referring to those
11 later.
12 For now, I would like you to refer to
13 Exhibit 3, which is a spreadsheet of the Northside Canal
14 Company's storage deliveries in 2005.
15 Do you recognize this?
16 A. Yes.
17 Q. These numbers come from the Northside Canal
18 Company; do they not?
19 A. That was my understanding. I received them
20 from Northside.
21 Q. Okay. Do you have any reason to dispute these
22 numbers?
23 A. Um, not -- no, not really.
24 Q. And this is the information to which you refer
25 in your January 13th memo; is it not? That would be

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1 Company; isn't that correct?
2 A. That's what is represented on this
3 spreadsheet.
4 Q. This means, then, according to Northside Canal
5 Company, as reflected in this spreadsheet, that some
6 9400 -- I'll call it -- acre-feet were diverted into the
7 Canal's system, but not used on the conversion acres and
8 not put into the Sandy Pipeline Project; isn't that right?
9 A. Well, again, I -- I don't know. I didn't come
10 up with this number. It was just returned to us.
11 Q. Okay. Do you know how much water was
12 accounted into the conversion projects?
13 A. Into the conversion projects, yes. I went --
14 I created a spreadsheet, pulled the numbers out of this
15 table that could be accounted into each individual
16 conversion project. And that was, uh -- that was reported,
17 I believe, as a part of the conversion memo. And I cannot
18 remember that number off the top of my head, but I could
19 look in this memo and find it if you'd like.
20 Q. I'd appreciate that. And which exhibit are
21 you referring to, now?
22 A. I believe I'm in Exhibit --
23 Q. 2?
24 A. -- 2. It appears that I came up with -- total
25 deliveries of rental water to conversion project field

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1 Exhibit 2, I think, on Page 2 of that memo. You might want
2 to refer to that.
3 A. In the last paragraph? Yes, that's what I'm
4 referring to.
5 Q. Yes. Okay. And these numbers, that is the
6 key numbers, I think, that I'm referring to here are near
7 the end of this spreadsheet, the 40,925.85 acre-feet
8 delivered -- or actually not delivered but noted there in
9 the last column.
10 A. Uh-huh.
11 Q. Is that a "yes"?
12 A. Please repeat your question.
13 Q. The question is whether the 40,925 acre-foot
14 number, which I understand to be the amount diverted into
15 the Northside Canal for these groundwater district
16 programs, is essentially the same number that has been used
17 in the Director's Orders?
18 A. Uh, that I'm not sure about. I did not
19 work -- I worked with only portions of these numbers on
20 this spreadsheet.
21 Q. Okay. I'd like you to refer to the number
22 right above that in the right column; the 9,444 acre-foot
23 number.
24 A. Uh-huh.
25 Q. This is accounted as a loss by Northside Canal

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1 headgates was reported to be about 20,400 acre-feet.
2 Q. Okay. The additional water that was diverted
3 into the Northside Canal was going to the Sandy Pipeline
4 Project; isn't that correct?
5 A. I'm really not sure where it was going. I
6 don't administer it.
7 Q. Okay. The amount that you accounted, though,
8 to serve the conversions did not include that 9400
9 acre-feet, did it?
10 A. No. I was only counting what Northside
11 reported as being delivered to the field headgates.
12 Q. Would you agree, Ms. Yenter, as watermaster,
13 that carriage or seepage losses in a canal system can be,
14 and typically are, calculated as a percentage of the total
15 amount diverted into the canal?
16 A. Typically, that is how they are calculated.
17 They can be calculated another way. Typically, that is how
18 they are calculated.
19 Q. Are you aware that the calculation that
20 Northside uses is a percentage of amounts delivered?
21 A. Yes, I am aware of that.
22 Q. And based on Exhibit 3, do you recognize that
23 Northside Canal Company uses a 30 percent delivery charge
24 reduction?
25 A. I have been told that this is the surcharge

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1 that they are charging Northside.

2 Q. So the effect of that is that -- see if you
3 agree with me. The effect of that is if a person wants a
4 delivery of a hundred acre-feet at a certain point in the
5 canal system there must be 130 acre-feet diverted at Milner
6 into the canal to make that delivery.

7 Is that an accurate description of how that
8 works?

9 A. It would be close. But, there again, it's not
10 something that I'm -- you know, that I'm delivering on a
11 day-to-day basis. But yes, that would be close. That
12 would actually be, uh, more a percent of amount diverted
13 rather than amount delivered.

14 Q. Ms. Yenter, would you agree that once a canal
15 system has been charged any acre-foot of water diverted,
16 whether it's natural flow or storage, experiences
17 essentially the same carriage loss as any other acre-foot,
18 that there's no way to distinguish between the two?

19 A. Could you repeat that, please?

20 Q. Once a canal system has been charged and the
21 canal is up and running, would you agree that carriage
22 losses are experienced across the board by the commingled
23 waters in that canal system; that some acre-feet or some
24 diversions don't -- experience a different carriage loss
25 than others?

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1 canal? Have you ever seen them measured or described?

2 A. Of course I am.

3 Q. Would you say that a 30 percent loss in a
4 canal system on the Eastern Snake Plain is within the range
5 of plausibility?

6 A. Yes.

7 Q. Would you say that it's a reasonable amount of
8 loss?

9 A. I don't know if I can answer that. I -- it
10 appears to be reasonable, but it would depend on the system
11 we're talking about.

12 Q. Have you seen losses that are higher than
13 30 percent?

14 A. Not on the ESPA.

15 Q. Are you aware of any information suggesting
16 that this 9400 acre-feet of calculated losses that we have
17 been discussing here was used or consumed on any cropland
18 or in any other manner?

19 A. The only information I've seen is what I
20 received from the ESPA.

21 Q. So I take it the answer is "no"?

22 A. The answer to that would be "I have seen no
23 evidence."

24 Q. Okay. Have you seen any evidence that it
25 might have been spilled back to the river?

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1 A. I don't know that I can say that, because I
2 think it depends on the system that you're talking about.
3 And I don't know the Northside system, for instance, that
4 well to really answer that question.

5 Q. Would you know whether the canal system itself
6 discriminates between storage diversions and natural flow
7 diversions? Is it different water? It's not, is it?

8 A. You mean the physical canal?

9 Q. That's right.

10 A. You're referring to the physical canal?

11 Q. That's right.

12 A. Well, of course. The physical canal, no,
13 would not know the difference.

14 Q. And the water in the canal is commingled, is
15 it not, regardless of whose account it might have been
16 diverted for?

17 A. That is my understanding.

18 Q. With regard to the 30 percent surcharge or
19 carriage loss charge, is it your understanding that that,
20 in effect, represents the calculation of 30 percent
21 conveyance loss in the canal? Is that another way of
22 saying it?

23 A. I don't know. Again, I'm not administering
24 that loss so I really can't answer to it.

25 Q. Are you familiar with carriage losses in a

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1 A. I've seen no evidence, but I don't -- it's not
2 something that I check for.

3 Q. You don't measure spills?

4 A. I am not involved in the administration of
5 Northside Canal Company.

6 Q. Because that's in another water district,
7 isn't it?

8 A. Correct.

9 Q. Are you aware of any information suggesting
10 that this 9400 acre-feet did not seep into the aquifer?

11 A. I am just simply not aware of any information
12 regarding the 9400 acre-feet.

13 Q. Now, in its Orders the Department did not give
14 the groundwater districts a recharge credit for this 9400
15 acre-feet, did it?

16 A. That's correct.

17 Q. Did you advise the Department that no credit
18 should be given?

19 A. No. I did not make that decision.

20 Q. Would you agree that 9400 acre-feet is a
21 significant amount of water in the context of the
22 groundwater districts' mitigation efforts?

23 A. Yes, it is a significant amount.

24 Q. With regard to the voluntary curtailments,
25 sometimes called "reduction acres," I would like to ask you

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1 a few questions.
2 With regard to Exhibit 1, you note that it
3 contains preliminary conclusions. Do you note that?
4 A. I know that it is simply called "conclusions."
5 Q. Did you consider these conclusions to be
6 final, or were they subject to any further analysis?
7 A. These conclusions just represented the
8 determination of my analysis which were passed -- passed on
9 to the Director for a decision.
10 Q. At the bottom of the first paragraph of
11 Exhibit 1 is a sentence that says that this is a summary of
12 work completed, et cetera, and preliminary conclusions.
13 Now, I just want to make sure that this is not
14 a preliminary document.
15 A. Uh, you know, I see the, uh -- I see the
16 disconnect here. That is probably a word that should have
17 been removed from the memo, because I did not, in fact,
18 make any preliminary conclusions.
19 Q. You wrote this memo, though, right?
20 A. I did. I did. And that -- that word in that
21 first paragraph probably should have been removed.
22 Q. So these are your final conclusions?
23 A. This is my final analysis.
24 Q. Is it correct to say that additional
25 information could change that analysis?

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1 before you visited them?
2 A. A series of in-office analysis which included
3 comparison to aerial images, comparison to water rights,
4 um, comparison to past set-aside databases, um, comparison
5 to canal company share -- you know, share location shape
6 files, um, just comparison to all data that we had
7 available in our office to see if they met the criteria set
8 forth in the, uh -- in the Order of last year.
9 Q. An acre was deemed ineligible for voluntary
10 curtailment credit unless it was shown to have been
11 groundwater irrigated in 2004, or shown to be in a
12 mitigation plan in that year; isn't that correct?
13 A. Correct. It was shown to be . . .
14 Q. In a mitigation plan or to have been irrigated
15 with groundwater in 2004?
16 A. Yes. Otherwise, it would have been
17 ineligible.
18 Q. What was the rationale for the Department's
19 decision not to give curtailment credit to the groundwater
20 users for those acres unless they had been irrigated with
21 groundwater or in a mitigation plan in 2004?
22 A. Well, again, I didn't write that decision.
23 That decision came from the Director's Order. But it is my
24 understanding that we were looking for a, uh -- an actual
25 reduction of use -- of groundwater use.

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1 A. Possibly, yes.
2 Q. Have you done any further investigation of
3 these matters since you wrote this memo, Exhibit 1?
4 A. I would have to say no.
5 Q. Now, there were about 21,000 acres of
6 voluntary curtailments or reductions that were submitted by
7 the groundwater districts. Do you recall that?
8 A. Yes.
9 Q. And only about one-third or some -- I think it
10 was 6885 acres or so were recognized in the Director's
11 Order. Do you recall that?
12 A. Correct.
13 Q. So we're talking about perhaps one-third --
14 around one-third of what was submitted was found qualified.
15 Did you personally inspect each of these
16 21,000 some odd acres?
17 A. I did not personally inspect each acre. Uh,
18 myself and up to a half a dozen -- well, actually, it was
19 more like three or four of us. Myself and three or four
20 other staff inspected probably 95 percent of acres which we
21 initially determined to be eligible.
22 Q. Did you say 95 percent?
23 A. Of the eli- -- of what we determined to be
24 eligible. We did field verify the eligibility.
25 Q. How did you determine them to be eligible?

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1 Q. Now, is it true that you did not look at
2 groundwater irrigation in 2003, 2002, or 2001, in making
3 this analysis?
4 A. For the most part, yes. Well, we did not look
5 in the initial -- when we made the initial eligibility cut,
6 no, we did not go back to 2003 in making the analysis.
7 Q. Okay. I note that on Attachment A to
8 Exhibit 1 we've got some eligibility code descriptions.
9 And No. 5, which accounted for some 5200 acres of
10 disqualification, notes "not irrigated in 2004, not
11 irrigated in 2005, not eligible."
12 Did you write that?
13 A. Yes.
14 Q. Now, "not irrigated in 2005," it was not
15 supposed to not be irrigated in 2005, correct?
16 A. That's correct.
17 Q. So again, this is really just that it was not
18 groundwater irrigated in 2004. And therefore, even though
19 it's dried up now, it cannot be eligible. Is that how that
20 works?
21 A. Correct. That was an eligibility description;
22 in this case, a noneligibility description.
23 Q. Do you know who directed that it be the policy
24 of the Department that the land must have been irrigated in
25 2004 with groundwater to be eligible for curtailment

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1 credit?

2 A. Who directed it?

3 Q. Yes. Where did that policy come from?

4 A. I don't know where the policy came from. The

5 Director included that criteria in his Order.

6 Q. Do you know whether the acres that the

7 groundwater districts dried up, in any year going back

8 before 2004, benefit the reach gains in the

9 Devil's Washbowl reach, or is that something beyond

10 your understanding?

11 A. Well, it's something that I don't perform the

12 analysis on.

13 Q. Isn't it true that those groundwater rights

14 which were not pumped in 2004, and, therefore, their nonuse

15 in 2005 was not counted, still could be irrigated or pumped

16 now or in future years?

17 A. Under certain conditions, yes.

18 Q. And those conditions would include not being

19 under a curtailment Order, for example?

20 A. For example. Not being forfeited, for

21 example.

22 Q. Do you know of any forfeitures amongst any of

23 the groundwater acres that were submitted for voluntary

24 curtailment?

25 A. I wasn't looking for forfeitures. I didn't

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1 call; isn't that right?

2 A. That's correct.

3 Q. When you curtail a groundwater well, the same

4 is not true; is that correct, in general?

5 A. "In general."

6 Q. And it could take months or even years before

7 the curtailed amount could show up, if you will, to help a

8 senior somewhere else, in the groundwater context; isn't

9 that correct?

10 A. Correct. There is -- it is expected that

11 there is a lag time -- an unknown lag time in the aquifer.

12 Q. I'd like you to refer to Exhibit 4.

13 I'll represent to you that this is information

14 provided by the North Snake Groundwater District for the

15 years 2002, 2003, and 2004.

16 Do you recognize any of the information on

17 this?

18 A. Yes, I do.

19 Q. Okay. Do you recognize that this is a list of

20 conversions that this district carried out in those three

21 years?

22 A. Yes.

23 Q. Isn't it possible that some lands irrigated

24 with surface water in this '02 to '04 period could have

25 been receiving the surface water under the North Snake

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1 identify any.

2 Q. Okay. And groundwater rights have not been

3 forfeited, have they, just because they haven't been pumped

4 for a couple of years? That alone won't cause them to be

5 forfeited, correct?

6 A. Correct.

7 Q. Now, if it were the objective to increase

8 reach gains in the spring complex of serving Blue Lakes and

9 Clear Springs, if that were the objective, wouldn't it be

10 important that a groundwater right be turned off and kept

11 off for a number of years? Wouldn't that be better than

12 just a one-year turnoff?

13 A. Well, again, you're getting into an area

14 that's really not my expertise. I mean, I have certain

15 intuitive feelings about this, but that's not my area of

16 expertise. You've asked the wrong person.

17 Q. So that's an "I don't know"?

18 A. "That's an I don't know."

19 Q. Okay. Now, with regard to administering water

20 rights and the effect of that administration on the senior

21 who needs the water, let's take a hypothetical here. If

22 you were to curtail on a surface stream a junior's

23 headgate, you would expect, would you not, that the water

24 that he was foregoing would immediately or nearly

25 immediately be available to a downstream senior making the

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1 Conversion Program in that period? Is that possible?

2 A. That's possible. Yes, it's possible.

3 Q. Did you evaluate this possibility in deciding

4 to disqualify a particular acre from the Curtailment

5 Program, because it was only being irrigated with surface

6 water in 2004, not groundwater?

7 A. Uh, clarify exactly what you're asking me

8 there, please.

9 Q. Did you evaluate the possibility whether a

10 particular acre that you were disqualifying was because it

11 was not irrigated with groundwater in 2004?

12 A. And you're speaking of a reduction acre rather

13 than a conversion acre?

14 Q. Correct. A reduction acre --

15 A. Okay.

16 Q. -- actually was in a conversion project that,

17 arguably, hadn't been listed -- potentially had not been

18 listed by the groundwater user. Did you evaluate that;

19 whether there was any disconnect?

20 A. Uh, I did evaluate the connection between

21 reduction acres and conversion projects. There were a few

22 reduction acres that I disqualified because they were part

23 of an active conversion project. Or it was my

24 understanding that they -- well, they were -- they were to

25 be pumped from the same well that was part of an active

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1 conversion project and, uh, there was that overlap.
 2 I didn't evaluate the fact that there might
 3 have been an unlisted conversion project if that's -- if
 4 I've answered your question -- if I've understood your
 5 question?
 6 **Q. Yes, that's right. You say you disqualified**
 7 **an acre because it was part of an active conversion**
 8 **project. The point there is you would not want to count it**
 9 **twice?**
 10 A. Exactly.
 11 **Q. In category 6 --**
 12 A. You're back on reduction --
 13 **Q. -- back on the Exhibit 1; that is, eligibility**
 14 **Code 6.**
 15 A. Uh-huh.
 16 **Q. It states that it's irrigated in 2005 with**
 17 **surface water, not part of a conversion project, not**
 18 **eligible. And this indicates, does it not, that there were**
 19 **some 3400 acres of submitted lands that were not given any**
 20 **mitigation credit, because even though it was irrigated**
 21 **with surface water in '05, the lands were not formally part**
 22 **of any conversion project?**
 23 **Is that an accurate description of that**
 24 **disqualification code?**
 25 A. Ummm, partly. Um, that was just referring to

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1 accurate way of saying this?
 2 A. Um, yes. Yes. Because that is -- that was --
 3 another part of that was that they were not part of the
 4 conversion project so, therefore, we could not give them
 5 credit for that. But, yes, that would be as accurate as
 6 you could probably get it.
 7 **Q. So in that case, then, is it accurate to say**
 8 **that an individual landowner might forego groundwater**
 9 **pumping and, instead, use her Northside shares, for**
 10 **example, on her property? And that would, would it not,**
 11 **reduce groundwater pumping from the aquifer?**
 12 A. That is correct. It would.
 13 **Q. But you decided not to give it credit as a**
 14 **conversion because it was not listed as part of the**
 15 **conversion program?**
 16 A. No. The reason we didn't give it credit is
 17 because in most of those cases there simply was not enough
 18 background data to determine a reduction in groundwater
 19 use.
 20 **Q. Is it possible that there could be more**
 21 **information gathered up on those situations, or do you feel**
 22 **like you have completely exhausted all the available data**
 23 **on those questions?**
 24 A. Oh, no. We could get to the point where that
 25 could actually be done, where there are just some data gaps

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1 those lands which we disqualified, because there was a
 2 supplemental source of water which was going to be
 3 continued to be used even though groundwater use was partly
 4 or entirely eliminated.
 5 **Q. When you say "a supplemental source," do you**
 6 **mean a supplemental groundwater source?**
 7 A. No. In this -- in this case -- and I believe
 8 this question has come up previously, and my answer now is
 9 the same as it was then. In all these documents I use the
 10 term "supplemental" not referring to the primacy in any
 11 particular right, but just in cases where there are two
 12 sources of water that may be used to irrigate the same
 13 land.
 14 So in this case the surface water being a, uh,
 15 additional source of water that could be used to irrigate
 16 groundwater acres. They may have reduced their groundwater
 17 use, but they continue to irrigate all the acres with their
 18 other water source and, uh, weren't given credit for a
 19 conversion project so the acres were not eligible. We
 20 basically decided not to extend credit to multi-source
 21 acres unless the acres were dried up.
 22 **Q. Is this to say, then, Ms. Yenter, that these**
 23 **lands were not listed in a conversion project, and even**
 24 **though they were irrigated with surface water and not with**
 25 **groundwater they were, therefore, ineligible? Is that an**

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1 that are being closed, that -- actually, they are being
 2 closed, but -- as we get more data that is likely possible.
 3 **Q. Have the groundwater districts, or, in this**
 4 **case, North Snake Groundwater District, been forthcoming in**
 5 **providing data when asked?**
 6 A. Oh, yes.
 7 **Q. What would the groundwater districts have to**
 8 **do to qualify these -- what I'll call -- "do-it-yourself**
 9 **conversion lands" for credit?**
 10 A. We need a good baseline of groundwater use
 11 data. And, uh, you know, we're just -- we're missing
 12 enough measurements on some of these particular diversions
 13 that -- that we just can't establish a baseline. And so
 14 even though we have a current -- a good, current
 15 measurement we don't have anything to compare it to. So
 16 the more years we get good, solid data, uh, the better
 17 position we will be in to document -- document
 18 reduction -- actually document.
 19 **Q. And I take it you're willing to work with**
 20 **North Snake to evaluate that data should they provide it?**
 21 A. Oh, yeah.
 22 **Q. In 2005, you recall, I'm sure, the unusually**
 23 **wet spring, don't you?**
 24 A. Yes.
 25 **Q. And you're aware that because of this**

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1 available moisture that some crops actually emerged and
2 were maturing into June without any irrigation; isn't that
3 right?

4 A. Correct.

5 Q. And some crops may even have produced a full
6 crop without any irrigation that year; isn't that correct?

7 A. It was possible.

8 Q. Could you describe how, in making your field
9 inspections, you determined whether a crop had received
10 irrigation water in those months in 2005?

11 A. That one did pose us a bit of a -- a bit of a
12 quandary at times. We did have both an early and a late
13 photograph in '05, so we were able to pick up things like
14 early frost. And, um, then it was sometimes just a matter
15 of field investigation to see the type of crop that had
16 been grown and if there was any evidence in the irrigation
17 system. Every -- it was -- a lot of times it was a
18 case-by-case issue. We were cognizant of that, though.

19 Q. Where it was not clear what did you tend to
20 do?

21 A. Where it was not clear we tended to -- quite
22 honestly, we went with our gut. You know, it was somewhat
23 subjective. And in some cases we would, uh, just give them
24 the benefit of the doubt. I -- it really didn't involve
25 all that many acres. I don't have a number for you,

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1 A. I didn't actually ever disqualify any
2 conversions. There were a number that weren't developed.

3 Q. Okay.

4 A. There was four or five that weren't developed,
5 but I -- I didn't actually disqualify out of hand any
6 conversions.

7 Q. Some you disqualified in part, did you not,
8 because of your conclusion that there was a supplemental
9 well providing groundwater to the property?

10 A. Well, I'm confused. No. No. Because we
11 wouldn't have -- we wouldn't have disqualified a conversion
12 project. We would have -- we would have -- no. We
13 wouldn't have disqualified a conversion project just
14 because there was a supplemental well. I think that was
15 kind of the point.

16 Q. Let me rephrase that. You extended less than
17 full credit to some conversion projects because of the
18 existence of a supplemental well operating on the property,
19 isn't that correct?

20 A. In the final analysis, yes.

21 Q. Did you evaluate the licenses or decrees of
22 each of those supplemental well situations to determine
23 whether those wells were, in fact, pumping a supplemental
24 groundwater right?

25 A. We did not evaluate as to primacy. We only

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1 though. It strikes me that that didn't involve more
2 than -- well, I don't know, 10 percent or 8 percent. Maybe
3 not even that many. Like I said, I just don't have a good
4 feel for that.

5 Q. I'd like to ask you some questions now about
6 the conversion project in North Snake Groundwater District.
7 Refer to your memo, which is Exhibit 2, the January 13,
8 2006 memo, please.

9 Now, you prepared this as a result of your
10 field inspections and other work; did you not?

11 A. Correct.

12 Q. Now, I asked you earlier about visiting each
13 of the conversion parcels, and you, I think, indicated
14 that -- or maybe this was the reduction parcels.

15 Let me just ask you: Did you visit each of
16 the conversion parcels?

17 A. I did or an associate did.

18 Q. So it wasn't a 95 percent, it was a hundred
19 percent?

20 A. Yes. This was a 100 percent reduction.

21 Q. Now, you determined that a number of the
22 proposed conversions were ineligible. You disqualified
23 them, correct?

24 A. The conversions or reductions?

25 Q. The conversions.

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1 evaluated as to -- well, no, wait. Let me back up. By
2 "supplemental," were you referring to the existence of
3 canal shares? That's really all we investigated was the
4 existence of both the groundwater right and -- and the
5 existence of canal shares on any given parcel.

6 Q. So, in your view, a well is deemed
7 supplemental for purposes of the conversion process if
8 there are canal shares on that same land; is that accurate?

9 A. Well, it's a term we use rather loosely.
10 Sometimes it's -- you know, sometimes it can have different
11 meanings.

12 Q. You're aware, aren't you, that licenses and
13 decrees for groundwater wells will contain actual
14 supplemental language? Are you aware of that?

15 A. I am. And that's why I say we use that term
16 somewhat loosely, because in -- in some cases that's not
17 necessarily a declaration of privacy of the right.
18 You know, we -- again, in the context of this exercise I
19 confuse the word "supplement" that you refer to anytime
20 there's more than one source of water on any given
21 irrigated acreage.

22 Q. Are you aware, though, that many groundwater
23 users who have a primary groundwater right will use the
24 groundwater right and not use their shares?

25 A. Yes. I am aware that that occurs.

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1 Q. Sometimes they may lease their shares to
2 others; isn't that right?
3 A. That's correct.
4 Q. Or sometimes they may not do anything with
5 them and just use the groundwater; isn't that correct?
6 A. That's correct.
7 Q. And if they have a groundwater right that has
8 no supplemental notation on it, they're entitled to treat
9 that as a primary groundwater right; isn't that correct?
10 A. That's correct.
11 Q. They would be entitled to transfer that
12 groundwater right to someone else who could then operate it
13 as a primary right. Wouldn't that be correct?
14 A. I've seen it go both ways in the transfer
15 process.
16 Q. Sometimes denied, sometimes allowed, you mean?
17 A. Sometimes a different -- yeah. Yeah -- yes.
18 Q. In this instance, though, you simply assumed
19 that the well was going to be treated, and suggested that
20 it be treated as supplemental if there were shares on the
21 property, correct?
22 A. I don't know that I ever actually made a
23 determination of -- of actual privacy of the well. I was
24 only concerned whether or not there was an existence of
25 canal shares on the conversion of the parcel.

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1 them, I believe -- the difficulty in some cases of getting
2 accurate measurements of groundwater wells. Do you recall
3 that?
4 A. Oh, yes.
5 Q. So where you were unable to get an accurate
6 measurement you applied the 30 percent figure; is that
7 accurate?
8 A. No, not for conversions. For conversions --
9 one of the criteria for conversions is that we could
10 measure the groundwater. That was an absolute criteria.
11 So, uh, if the groundwater was not able to be measured in
12 2005, the operator was required to install -- install some
13 kind of a device in order that we could measure or estimate
14 the groundwater use in 2005.
15 Q. In your January 13th memo -- again, that's
16 Exhibit 2, you say that you determined these supplemental
17 acres by -- or supplemental well irrigated acres, I take
18 it, by evaluating an Arc View NSCC layer showing locations
19 of surface water deliveries to active shareholders.
20 Have you got a copy of this Arc View layer?
21 A. We have one in the Department.
22 Q. And that's a map, isn't it?
23 A. It's a spatial, digital Arc View of coverage,
24 yes; essentially, a map.
25 Q. Has this been provided to the groundwater

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1 Q. I understand. But when you found that
2 circumstance you applied the "partial disqualification,"
3 I'll call it, for that conversion project; isn't that
4 right?
5 A. No, not exactly. I -- I didn't -- like I
6 said, I didn't disqualify any conversion project. At the
7 end of the year, when we received the -- the data, and if
8 the well had been pumped, we subtracted that from the
9 surface water credit at that conversion project. That was
10 per the Order.
11 Q. The subtraction -- I guess I'm calling that a
12 "partial disqualification."
13 A. Okay.
14 Q. Is that okay with you?
15 A. Uh, if you wish.
16 Q. The subtraction or partial disqualification
17 was assumed to be 30 percent in each case or only in some
18 cases?
19 A. No. On conversions it was -- uh, we tried to
20 make that an actual. We looked at it -- we -- we tried to
21 determine, as nearly as possible, the, uh -- the actual
22 groundwater use at that point of diversion, if for 2005.
23 And we were dealing at the end of 2005 with the 2005
24 diversion of water from the particular well.
25 Q. You noted elsewhere in your memos -- both of

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1 district?
2 A. I don't know that -- I don't know if it has or
3 not. It -- it certainly could be.
4 Q. You note that this Arc View layer was current
5 only as of the 2003 irrigation season, correct?
6 A. That was my understanding when I was using it.
7 Q. What does the Arc View layer show?
8 A. It shows where shares of Northside Canal
9 Company are presently, um, assigned or appurtenant.
10 Q. Does it show actual acres, or does it show a
11 more general description on the Arc View layer?
12 A. It's just a general description.
13 Q. A general description of 40-acre tracts?
14 A. Yes.
15 Q. So there's no way to tell from the Arc View,
16 is there, how many shares are within that 40-acre tract?
17 A. No.
18 Q. And certainly not the number of shares on any
19 given parcel?
20 A. No.
21 Q. And there's no way of telling whether the
22 shares were leased or rented to that parcel, or whether
23 they were owned by that landowner?
24 A. No. It didn't show any of that status; at
25 least not the information I was looking at.

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1 Q. The Arc View layer also does not display what
2 was happening in 2002, 2004, or 2005, does it?

3 A. No. It was -- it was a point in time
4 reference.

5 Q. And that's 2003?

6 A. I believe so.

7 Q. Do you remember what time of year in 2003?

8 A. I don't remember.

9 Q. You don't know?

10 A. It was something the Department had asked
11 Northside Canal Company for and it was identified by
12 Department staff.

13 Q. And it does not tell us whether a particular
14 parcel was irrigated by groundwater in 2004, does it?

15 A. No.

16 Q. And it does not identify individual conversion
17 parcels, does it?

18 A. No. Just Northside shares.

19 Q. And when you speak of "active shares," do you
20 mean the shares that are paid up or shares to which
21 deliveries are being recorded? What do you mean by "active
22 shares"?

23 A. Did I refer to "active"? Can you point out to
24 me where I referred to "active shares"?

25 MR. FEREDAY: If we could take just a quick

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1 statement as to the use of the shares, just where they were
2 so assigned.

3 Q. Right. So would this be an accurate
4 description that that active share or active shareholder
5 would refer to a parcel where there were Northside shares
6 where delivery could be had if the landowner so requested,
7 is --

8 A. Correct.

9 Q. -- that right?

10 A. Correct.

11 Q. Okay. But it does not mean that Northside
12 water was delivered to that parcel, does it?

13 A. No. I really have no way of knowing that.

14 Q. Okay. With respect to the conversion acres
15 what steps did you take to determine, Ms. Yenter, the
16 extent to which groundwater diversions to these acres, in
17 fact, were curtailed in 2005?

18 A. We used, uh, visual system inspections. We
19 looked at power records where the well was on a dedicated
20 power meter. We used, uh, hour meter installations where
21 the well was not on a dedicated power meter so that we
22 could determine whether or not the -- the deep well itself
23 can operate it. We used flowmeter readings, hour meter
24 readings -- pretty much a light gamut -- whatever was
25 relevant for that site to determine whether or not that

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1 break and go off the record for a second.

2 THE WITNESS: Yeah. I would like to be able
3 to answer that in one piece.

4 (Discussion off the record.)

5 MR. FEREDAY: Okay. We can go back on the
6 record now. We found it. I'm sorry for the delay.

7 Q. (BY MR. FEREDAY) In the January 13th memo, 7
8 2005 Summary of Activity, in the middle of the first page
9 the second bullet, "Surface water deliveries to active
10 shareholders." Do you see that?

11 A. Yeah, I see that.

12 Q. I was referring to active shares, but I
13 presume that's an accurate enough statement.

14 What do we learn from the use of the word
15 "active" there?

16 A. Um, I believe I was using that phrase to imply
17 that that's just where Northside was reporting that those
18 shares were being used. That was -- that was where they
19 were reporting to us that those shares were -- were
20 actively being delivered.

21 Q. They actually were being delivered?

22 A. Well -- or "deliverable" is probably more
23 accurate.

24 Q. "Deliverable"?

25 A. Because they weren't making any -- any

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1 well could pump.

2 Q. If you were unable to determine exactly how
3 much the well had been pumped, but had evidence that it had
4 been, was that the circumstance that you assigned the
5 30 percent credit?

6 A. No.

7 Q. Could you describe how you arrived at the
8 30 percent credit?

9 A. Okay. I'm a little confused, because I don't
10 recall using the 30 percent credit in conversions. We only
11 used the 30 percent credit in reductions.

12 Q. How did you arrive at it there? Maybe we're
13 digressing to reductions now, but --

14 A. Yeah.

15 Q. -- I would like to get an answer to that.

16 A. Yeah. That's okay. I -- I did not come up
17 with that figure on my own. Um, it was one that the
18 Department, uh, agreed to use. And, um, there again, I
19 have a basic understanding of -- of how it was -- it was
20 settled on, but I wasn't involved in that -- you know, in
21 that analysis, so I don't -- I don't know that my answer
22 would be -- you know, I don't know how germane my answer
23 would be, just simply because I did not arrive at the
24 number myself.

25 Q. Okay. Isn't it true that any percentage

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1 reduction, though, to be accurate, would have to be
2 parcel-specific and it would have to look at the specific
3 mix of waters actually being used on that particular
4 parcel?

5 A. Of course. I will -- I can tell you that I
6 believe the 30 percent represented an average -- what the
7 Department believed was an average reduction.

8 Q. Okay. Back to conversions.

9 A. Okay.

10 Q. Were there certain conversions where you felt
11 that the headgate measuring device for the delivery of
12 surface water was inaccurate?

13 A. There was one that I had some concerns about,
14 um, and I never really investigated the headgate delivery
15 structures on the conversion projects last year. I did not
16 have time.

17 Q. Do you think that is a significant problem
18 going forward? I just want to know whether you think that
19 maybe the headgate diversion measuring devices need to be
20 improved for the future?

21 A. I don't really know, Mr. Fereday. I --
22 because I haven't looked at a lot of them. This just
23 happened to be one that was right on the farm, and I could
24 see it, and I had some questions about it. And, uh, the
25 rest of them, uh, were up the ditch somewhere and I didn't

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1 difficulty?

2 A. Yes. And those were the operators who were
3 required to put alternative devices on for 2005.

4 Q. Do you remember who some of those individuals
5 were?

6 A. Well, not without my notes, no. It's all
7 contained in the spreadsheet which was sent out.

8 Q. That was the large format spreadsheet?

9 A. Correct. There was, I think, a specific
10 column in there that even referred to device required for
11 2005.

12 Q. With regard to those conversions that were
13 irrigated under Northside shares, I take it you did not
14 make any attempt to determine whether the shares were being
15 rented or whether they were appurtenant to those parcels?

16 A. No. We did not look into that. I mean, not
17 directly with the canal company, only the information we
18 had in our office.

19 Q. With regard to the power consumption
20 coefficient, or PCC measurements, you note back in
21 Exhibit 1 that even -- quote, "Even with current PCC
22 measurements power consumption data are not received until
23 January or February, and final determinations of
24 groundwater use cannot be made until then," end quote.

25 Do you recall that?

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1 really get a chance to look at them. That is something
2 that needs to be verified.

3 Q. Okay. In that one instance where there were
4 some questions did you notify that landowner or that
5 irrigator about that problem?

6 A. I notified the operator that I had a concern
7 about the device. I did not talk to the ditch rider.

8 Q. Do you remember who that operator was?

9 A. Yes. It was, um -- well, it was K & W Farms.
10 The name of the operator escapes me right now.

11 Q. And with regard to some of the conversions
12 where there were groundwater pump measuring systems
13 involved, didn't you find that in some of those situations
14 the measuring system was not up to snuff or was not as
15 accurate as you would like? Is that fair to say?

16 A. Yes.

17 Q. And what specific concerns with regard to pump
18 measurements -- groundwater pump measurements -- did you
19 identify?

20 A. Mostly the issue was that when the, um -- the
21 system was converted over to a mixed-use system, um, the
22 former method of power consumption coefficient was no
23 longer valid, because of multiple demands on its
24 power meter.

25 Q. Did you inform those operators of this

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1 A. Yes.

2 Q. Did you acquire those power records after
3 writing this memo and attempt to make final determinations
4 of groundwater use on those parcels?

5 A. No. On the conversion projects we requested
6 power data from -- through the North Snake Groundwater
7 District, who collected it from their users, who I assume
8 had to go directly to Idaho Power on the ones that we
9 needed.

10 Q. What about attempting to acquire power data
11 after the January/February date? Are you saying that
12 that's when it was provided?

13 A. No. It was provided on conversion projects,
14 uh, for us in, uh, December -- before I -- before I wrote
15 this note for just those conversion wells where PCC remains
16 valid and where -- well, actually -- yeah. Where PCC
17 remains valid and where we could get to areas of
18 groundwater withdrawal using PCC, we actually requested
19 that early power records be turned in to us in December of
20 2005 so we could make this analysis.

21 Q. So the analysis, then, was not necessarily as
22 accurate as it could have been if the final PCC data had
23 come in after February; isn't that correct?

24 A. No, I wouldn't say that.

25 Q. Why not?

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1 A. Because we got the same -- we got the power
2 data directly from the consumer rather than waiting for it
3 from Idaho Power. It was the same power data.
4 Q. Okay. You never knew the instances where the
5 two differed?
6 A. You know what, I don't know that -- that
7 wasn't part of our plan just to go back and check that once
8 the, uh -- you know, once the -- once the power data
9 official record came in. I didn't do that personally. I
10 don't know if that took place, uh, you know, with other
11 staff.
12 Q. Okay. With regard to excess deliveries to
13 conversions, my understanding is that any delivery of
14 surface water beyond four acre-feet per acre was not
15 credited directly to that conversion; is that correct?
16 A. That's my understanding.
17 Q. And that the excess, instead, was credited as
18 recharge distributed throughout the Northside system.
19 that your understanding?
20 A. It's my understanding, but a question for -- a
21 specific question for someone else, but that is my
22 understanding.
23 Q. And who would that someone else be?
24 A. That someone else would be, uh, Dr. Wylie.
25 Q. Okay. Now, the four acre-feet, where does the

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1 that, that's paragraph numbered 14.

2 A. Um, I don't think I'm on the same --

3 MR. FEREDAY: Let's go off the record for a
4 moment.

5 (Discussion off the record.)

6 Q. (BY MR. FEREDAY) -- 29th Blue Lakes Order.
7 Sorry for that delay. I had written down the wrong page.

8 Page 5, I note that the Order states that,
9 quote, "The volume of surface water exceeding the volume
10 needed to irrigate the conversion acres was 1380
11 acre-feet."

12 Do you see that?

13 A. Paragraph -- oh, yeah --

14 Q. 14.

15 A. -- paragraph 14?

16 Q. Correct.

17 A. Yes.

18 Q. And then it goes on to say a little further
19 down that this 1380 acre-feet of surface water was spread
20 throughout the service area of the Northside Canal Company
21 and input and the ESPA groundwater model was recharged.
22 That is, again, what we were talking about earlier,
23 correct, about the excess deliveries going into a recharge
24 analysis?

25 A. Correct.

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1 four acre-feet come from? How did you land on that number
2 as the amount of acceptable delivery?

3 A. Again, that number was, uh, landed on not by
4 me specifically, but, um, by the Department as, uh, being,
5 a standard or average duty of water for acres in the area.

6 Q. Did you observe or otherwise analyze as
7 watermaster where the excess delivery went?

8 A. No, I didn't, because I really didn't get the
9 confirmation of excess delivery until well after the
10 irrigation season.

11 Q. So with the excess delivery what we have is a
12 situation where -- let's just take an acre. We had an acre
13 and there were five acre-feet headed for that acre. Only
14 four acre-feet would be credited and the other
15 acre-foot would just go somewhere else, correct?

16 A. Well, in our -- in our analysis, yes.

17 Q. In the Court's April 29th Blue Lakes Order --
18 and if you have a copy of that it might be helpful looking
19 at Page 7 of that Order.

20 Do you have that?

21 A. Okay. What -- what -- I believe I have it.

22 Q. That's the April 29th . . .

23 A. Order Approving 2005 Substitute Curtailments
24 at Blue Lakes?

25 Q. Yes. I note that I have here a quote from

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1 Q. And again, you didn't have any input to making
2 those determinations, did you?

3 A. No. No.

4 Q. And do you know, Ms. Yenter, where this
5 excess -- this total of 1380 acre-feet was measured? Was
6 it measured at the headgate of the Northside Canal at
7 Milner, at the points of delivery, or do you know?

8 A. Well, I am -- I am presuming that this 1300
9 was part of -- of the field headgate measurements that we
10 received. Because in my analysis I worked with just the
11 absolute field headgate measurements which were reported to
12 me whether they were excess or not.

13 Q. So the point of measurement would have been
14 the point of delivery, because that's where you were able
15 to make those measurements to determine whether there was
16 excess; isn't that right?

17 A. Well, I didn't make the measurements.
18 Northside Canal Company made the measurements and we were
19 just given the data. But yes, that was where those
20 measurements were made was at the -- the field headgate
21 delivery point.

22 Q. Okay. Thank you. Down to some of those small
23 acreages that I spoke of earlier --

24 A. Uh-huh.

25 Q. -- and back to reduction acres, and back to

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1 Exhibit 1, in that December 12th memo you wrote that,
2 quote, "Acres under endguns were not accepted. Parcels
3 less than one acre were not accepted."

4 What was the rationale behind your decision to
5 deny credit for acres under endguns and all parcels under
6 one acre?

7 A. Acres under endguns are pretty hard to
8 determine in some cases because of overspray and because of
9 pivot overlap. Acres under endguns don't actually always
10 amount to production. We saw some of that.

11 I also saw acres under endguns which were not
12 a part of the water -- about the water right. In other
13 words, the endgun has been added after the water right was
14 determined and, uh --

15 Q. In other words, it was an enlargement of some
16 kind?

17 A. Actually, an enlargement. But a lot of times
18 I reported those under "enlargements" rather than under
19 "endguns." I believe -- and, here again, I'm not totally
20 familiar with this reference, but I believe the Department,
21 in one of its programs, has made the determination not to
22 recognize endgun reduction as just being minor, and so we
23 tried to stay consistent with that.

24 Um, parcels less than one acre were just
25 really -- even when we had good documentation on 'em -- so

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1 another circle. So to turn that endgun off really gains
2 you nothing. That area is still irrigated under that other
3 circle. Um, and what's left over was just -- almost
4 insignificant.

5 Q. What if an endgun, though, is the only source
6 of water for that particular corner or acre or parcel?

7 A. Um --

8 Q. Wouldn't turning it off actually cause less
9 water to be diverted from the aquifer and less consumptive
10 use to occur?

11 A. I would agree that it could cause less
12 consumptive use. I would not always agree that less water
13 was diverted, but that's simply because the system just
14 makes an adjustment when an endgun comes on.

15 Q. What kind of adjustment does the system make
16 when an endgun comes on?

17 A. A lot of times the, uh, pressure at the
18 nozzles for the rest of the pivot are just, uh -- are just
19 reduced to accommodate the extra flow of the demand of the
20 endgun.

21 Q. So shutting off -- if there was -- let's just
22 pick a number. If there were a hundred gallons a minute
23 coming into the pivot, turning on or shutting off the
24 endgun would not cause that hundred gallons a minute to
25 change. Is that --

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1 small that -- well, we couldn't verify 'em on our -- on
2 our, uh, digital -- digital photography that we had. They
3 were just too small and our resolution was too gross. We
4 just couldn't get down that small.

5 And also, even when you'd go out in the field
6 sometimes it was tough to find them or even determine
7 anything. So for the number of small parcels that there
8 were -- and I don't believe there was more than a
9 handful -- we, uh -- we just didn't -- we just didn't
10 include it.

11 Q. You agree, though, that drying up even a small
12 parcel that was irrigated with groundwater would cause a
13 reduction in consumptive use from the aquifer?

14 A. It varies, certainly.

15 Q. You mentioned that reductions -- often
16 endgun -- turning off endguns doesn't cause a reduction. I
17 think that's what I -- at least that's what I heard.

18 Could you elaborate on that, please? Is that
19 a correct characterization of your statement?

20 A. Yeah, that's what I said. Um, in many cases
21 what I see in the field is that pivots overlap, and the
22 real benefit of the endguns is only in the corners. But,
23 um, on the sides of the pivots the two pivots come
24 together, and so you've basically got your endgun watering
25 somebody else's -- you know, watering the area underneath

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1 A. I have --

2 Q. -- a good hypothetical?

3 A. I have measured systems where the endgun on or
4 endgun off condition, the diversion from the well was
5 approximately the same. It didn't make a significant
6 difference. But that, again, is only referencing the
7 actual version of water, the actual withdrawal of water.
8 The consumptive use could be decreased. It was an amount
9 that we decided to stay consistent and just not allow any
10 endguns.

11 Q. Now, the groundwater districts did receive
12 curtailment credit for some corners -- pivot corners, did
13 they not?

14 A. Sure, they did.

15 Q. And many others they did not receive credit;
16 isn't that correct?

17 A. That's correct.

18 Q. Could you just describe how you made the
19 determination from one to the other?

20 A. Well, in a -- in a pivot corner where it's
21 irrigated with, uh, hand lines or wheel lines or some other
22 equipment separate from the pivot, um, there was a valid
23 water right on that corner and that corner had been
24 irrigated and it was no longer irrigated and, uh, we
25 wouldn't get credit for that -- for those acres.

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1 Q. But if it was irrigated with the same pivot by
2 means of an endgun, or some other technique, you would tend
3 not to give it credit?
4 A. That's correct. An endgun will pick up -- I
5 don't know, I would say less than an acre of land -- extra
6 land in a corner. And there's typically three to seven
7 acres in a corner, depending on the acre in the (inaudible)
8 system.
9 Q. Ms. Yenter, just a few additional questions to
10 go back over a couple of things that maybe aren't clear.
11 With regard to Exhibit 1, I believe you
12 indicated that you made an initial determination of which
13 of the 21,000 some odd acres did not meet eligibility
14 criteria, and I think you indicated that you verified
15 something like 95 percent of those.
16 Isn't that what you said?
17 A. Yes. The ones that were initially determined
18 to be eligible.
19 Q. What were the initial eligibility criteria
20 that you applied? Are they set out fully in this memo?
21 A. They are set out mostly in this memo in the
22 table on Page 2.
23 Q. Do you know how many acres met this
24 preliminary eligibility criteria out of the 21,000?
25 A. You know, not exactly, Mr. Fereday, because

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1 some of our numbers were adjusted after we did our field
2 reviews both up and down, you know, before end use, but it
3 wasn't too awfully far away from the orig- -- you know, the
4 final number of 6885.
5 MR. FEREDAY: We have no further questions.
6 MR. DREHER: Thank you.
7 Mr. Steenson, you can go to Cross.
8 MR. STEENSON: Yes, sir.
9
10 CROSS-EXAMINATION
11 BY MR. STEENSON:
12 Q. I have a few questions concerning the question
13 Mr. Fereday asked related to credit for voluntary
14 curtailments and with respect to the seepage. I'll ask
15 about voluntary curtailments, first.
16 Do you mind if I called you "Cindy"?
17 A. No.
18 Q. Cindy, are you familiar with the Director's --
19 with respect to Blue Lakes, the Director's May 19th, 2005,
20 Order responding to Blue Lakes' demand?
21 A. Yes, I am.
22 Q. Okay. And have you reviewed the Orders that
23 he's issued subsequent to that relating to the Groundwater
24 Districts' Replacement Water Plans?
25 A. Yes, I reviewed them.

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1 Q. Now, what we're talking about here today
2 relates to; does it not, the following paragraph that I'll
3 read to you in the Director's May 19th, 2005 Order. This
4 is at Page 21.
5 Do you happen to have that?
6 A. I do have that one. Page 21?
7 Q. I'm sorry, I'm at Page 28.
8 A. 28.
9 Q. And this is the paragraph in parentheses
10 numbered "(1)".
11 A. Okay.
12 Q. And I won't read the entirety of it, but it
13 begins "By 5 p.m. on May 30, 2005, the irrigation district
14 or groundwater districts that polled (phonetic) to
15 represent the groundwater rights for consumptive uses
16 having priority dates later than December 28th, 1973,
17 causing material injury to water right number 36-07427 of
18 the affected water rights must submit a plan or plans to
19 the Director to provide mitigation by offsetting the
20 entirety of the depletion to the ESPA under such rights, or
21 to provide Blue Lakes travel with a replacement water
22 supply of suitable water quality of 10 cfs a minute
23 (inaudible)."
24 This is the paragraph that is the basis for
25 the Replacement Water Plans and it's the hearing that we're

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1 having today; is it not?
2 A. Correct.
3 Q. And the particular part of this paragraph that
4 these plans are submitted to address is the following
5 phrase, quote, "must submit a plan or plans to the Director
6 to provide mitigation by offsetting the entirety of the
7 depletion to the ESPA under such rights"; is that correct?
8 Do you see that phrase?
9 A. Yeah. I see that phrase. Yes.
10 Q. That's the phrase that these plans are
11 submitted to address; isn't that correct?
12 A. Yes.
13 Q. And what does this phrase mean to you; "-- by
14 offsetting the entirety of the depletions from the ESPA
15 under such rights"?
16 A. What does it mean to me?
17 Q. Yes.
18 A. I guess I would have to say it would mean to
19 me that it, uh -- that the groundwater user would be
20 required to offset the injury which had been determined
21 under that particular (inaudible). And by providing, you
22 know, replacement water at -- at that point.
23 Q. Specifically the phrase "depletion from the
24 ESPA," what does that mean?
25 A. "Depletion from the ESPA" typically refers

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1 to -- and, in my mind, usually refers to groundwater
2 pumping.
3 Q. Now, are you familiar with the groundwater
4 districts' plan for providing replacement water submitted
5 in May of 2005? Are you familiar with that document?

6 A. Yes.

7 Q. Okay. And in that plan -- do you happen to
8 have a copy of the plan?

9 A. I don't have that.

10 Q. In that plan I'll represent to you -- and in
11 subsequent additions to, or modifications to it, it
12 addresses the various aspects of mitigation that we're
13 talking about, including voluntary curtailment. And at
14 Page 5 of that plan the first paragraph reads in the first
15 two sentences "During the 2005 irrigation season the
16 groundwater districts are implementing a voluntary
17 reduction of groundwater-irrigated acres by district
18 members in Water District 130 not to exceed 10 percent.

19 "Both districts are requesting, through
20 written notices, that all district members reduce their
21 groundwater-irrigated acres by 10 percent as compared to
22 their 2004 irrigated acreage, and provide documentation to
23 the districts by July 1 for all reductions undertaken,"
24 close quote.

25 That means, does it not, that the groundwater

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1 your charge was to verify that the voluntary -- the acres
2 voluntarily curtailed were those they actually had to
3 irrigate in 2004?

4 A. Yes. That and -- that or the other
5 requirement that they were already in -- you know, in some
6 kind of a mitigation set aside. They were -- it was
7 actually kind of a dual criteria.

8 Q. And does this paragraph in the Director's
9 Order approving -- it was the 2005 substitute curtailments,
10 April 29th, at Page 6, paragraph No. 18, the third sentence
11 there -- could you read that. I know you don't have the
12 (inaudible) to read it out loud, but does that fairly
13 reflect the problem or paraphrase the problem that you
14 described in regards to verifying the acres actually
15 irrigated in 2004?

16 A. You're referring to the sentence that begins
17 "The Department found a number of problems --"

18 Q. Right.

19 A. That was, uh -- yes, that pretty well
20 summarizes most of the problems.

21 Q. And then do you also have the Director's --
22 oh, I'm sorry. I'm referring to the same document at
23 Pages 5 through 6, the prior paragraph 17, wherein at
24 sub (c) in 17 it lists the requirement to show when the
25 lands were last irrigated, et cetera. That, again, relates

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1 districts were proposing themselves that their voluntary
2 curtailment would mean a reduction in actually irrigated
3 acres -- acres that were actually irrigated in 2004; is
4 that correct?

5 A. That would be how I would "interpretate" --
6 interpret that statement, yes.

7 Q. I would "interpretate" it --

8 A. "Interpretate" it, yes.

9 Q. And then in the Director's Order regarding
10 IGWA's Replacement Water Plan with respect to the
11 Blue Lakes call, this was dated June 7th.

12 Do you happen to have that?

13 A. No. I didn't bring that one either.

14 Q. But there at Page 11 under "voluntary
15 curtailment" the Director's Order in paragraph 50 states
16 "The Replacement Water Plan states the districts have
17 submitted written requests to the members to voluntarily
18 reduce acres that were irrigated by groundwater in 2004 by
19 10 percent, and provide documentation to the districts by
20 July 1 of all reductions of the table."

21 This reflects the same concept, does it not,
22 that the voluntary curtailment would be curtailment of
23 acres actually irrigated in 2004; isn't that correct?

24 A. Yes, that's -- yes, that's correct.

25 Q. Now, isn't that really the basis upon which

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1 to the same concept of voluntary curtailment and
2 curtailment of acres actually irrigated in 2004; is that
3 correct?

4 A. Yes.

5 Q. Now, with regard to seepage loss, I'm not
6 clear on the status of how this issue has evolved and I'm
7 wondering if you could help me with this.

8 In the Director's June 7th, 2005, Order
9 regarding IGWA's Replacement Water Plan with respect to the
10 Blue Lake's delivery call -- do you happen to have a copy
11 of that?

12 A. No. I am familiar with it, though.

13 Q. Okay. Well, then for the benefit of everyone
14 who may not have a copy in front of them, at Page 6, under
15 the heading "Canal Seepage," there are the following two
16 paragraphs numbered 29 and 30, "The overall seepage loss of
17 30 percent determined by the Northside Canal Company's
18 delivery accounting is not the actual additional
19 incremental loss from the Northside Canal Company canals
20 and ditches resulting from additional deliveries of water
21 for conversions and to the Sandy Pipeline.

22 "When the canals and ditches of the Northside
23 Canal Company are fully charged and water is already
24 seeping into the ground, the addition of surface water on
25 top of the existing surface water flowing in the Northside

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1 Canal Company canals and ditches will not significantly
2 increase the seepage from the canals and delivery ditches.
3 Does that paragraph that I've just read fairly
4 reflect your understanding of the situation in regards to
5 this?
6 A. Yes, it does.
7 Q. Then the following paragraph No. 30 states
8 "IGWA did not provide any information about the actual
9 physical seepage of surface water from the Northside Canal
10 to groundwater resulting from delivery of surface water to
11 the conversion acres and the Sandy Pipeline. The
12 Department can't determine a nonreplacement of credit, if
13 any, contributable to the seepage."
14 Do you know whether or not IGWA has submitted
15 information about the actual physical seepage loss from the
16 Northside Canal?
17 A. If they have, I have not reviewed it. I don't
18 believe that they have.
19 Q. Okay. There was subsequently, then, in
20 further submissions by the groundwater districts to the
21 Director in directorial responses, additional discussion
22 related to seepage -- and I'm referring now to the -- bear
23 with me a minute. I can't find the reference, but there
24 was a discussion of recognition of -- in terms of
25 contribution to the aquifer -- an 18 percent figure related

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1 A. Yes.
2 Q. And what is the most recent measurement that
3 you recall, and can you compare that to its water rights?
4 A. Well, the most recent measurement I took at
5 Blue Lakes was between 137 and 140 cfs. Now, that is a
6 combined reading which represents, uh, the Pristine Springs
7 right of 25.3 cfs and then all the combined Blue Lakes
8 Trout's rights. So that means that Blue Lakes Trout was
9 receiving approximately 114 to 111 (inaudible) cfs. Um,
10 that would represent their first right being fully
11 satisfied at about 99 cfs and their second right being the
12 only part (inaudible).
13 Q. Can you describe that for me?
14 A. The water right number?
15 Q. In terms of its --
16 A. Uh, I don't --
17 Q. -- quantity?
18 A. Quantity? Without my notes here, Dan, I know
19 nothing. I believe the second right is about -- ahh --
20 45 cfs.
21 Q. Okay. And over the last season or two, do you
22 recall what Blue Lakes flow delivery might have been and
23 their version of it?
24 A. Yeah. I recall a low flow of about 131 cfs,
25 which would have put Blue Lakes at about (inaudible), and

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1 to the seepage loss after delivery to the field headgate.
2 In IGWA's June 2005 petition for
3 reconsideration IGWA states the following under the heading
4 on Page 3 "Nonrecognition of Credit For Canal Seepage; The
5 groundwater districts acknowledge that full credit for
6 seepage cannot be confirmed until the total quantity of
7 water actually delivered is known. The groundwater
8 districts disagree, however, that credit should be
9 recognized only for on-field seepage or that 18 percent is
10 necessarily the appropriate level of on-field seepage
11 credit that should be recognized for surface water
12 deliveries to converted acres," close quote.
13 Are you familiar with the concept of
14 recognition of 18 percent for on-field seepage and whether
15 that's been used in your administration?
16 A. I remember it. I remember talking about it
17 back when that Order was being prepared. And, uh -- I'm
18 familiar with it. I don't know how that number was
19 arrived -- I don't know how that number was arrived at.
20 Q. Is it a figure or a concept that you would
21 utilize in your calculation?
22 A. I haven't.
23 Q. And then are you familiar with current -- and
24 by that I mean the last several months -- measurements at
25 Blue Lakes headgates?

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1 this was perhaps two years ago.
2 MR. STEENSON: Thank you, Cindy. I have no
3 further questions.
4 MR. DREHER: Thank you.
5 Mr. Simpson.
6 MR. SIMPSON: Thank you.
7
8 CROSS-EXAMINATION
9 BY MR. SIMPSON:
10 Q. Cindy, with respect to Exhibits 1 and 2, it is
11 my understanding that you drafted those and had inputs on
12 those documents?
13 A. Correct.
14 Q. Are those complete copies of those documents?
15 A. Yes. Complete copies of those documents.
16 There were some supplemental electronic spreadsheets, which
17 I believe were distributed to all the parties.
18 Q. But at the time you drafted these documents
19 these were complete and accurate copies?
20 A. Yes.
21 Q. In Exhibit 1 you utilized the PCC
22 measurements, and you, I believe, testified earlier
23 regarding acquisition of those PCC measurements from the
24 various landowners; is that right?
25 A. Yes. We generally acquired them through the

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1 groundwater districts, right.

2 **Q. With respect to the utilization of PCC**

3 **measurements, is there an alternative way to calculate**

4 **water use, or would there be an alternative way to**

5 **calculate water use to utilize in a PCC?**

6 A. If the PCC is not able to be used, then

7 typically a system has to have some kind of an outlying

8 flowmeter (inaudible), and sometimes we can use a, uh -- an

9 in-line meter that measures (inaudible).

10 **Q. Is that a TotalizingMeter?**

11 A. Some kind of a TotalizingMeter.

12 **Q. With respect to the accuracy and, I'll state,**

13 **stability of utilizing PCCs, during your work this year**

14 **that resulted in your memo, did you identify -- or could**

15 **you identify for me any potential uncertainties that would**

16 **be working through the process of continuing to use PCCs?**

17 **That is, are PCCs and utilization of that formula and that**

18 **type of measurements free from uncertainties?**

19 A. Certainly not free from uncertainties; nothing

20 is. But PCC in general, under the right circumstances, is

21 still a fairly sound method of measurement. The problem is

22 attaining the right circumstances.

23 **Q. Okay. Under what circumstances is it a sound**

24 **measurement?**

25 A. Where there are -- where there's a dedicated,

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1 plus or minus ten percent.

2 **Q. On the type of system you just described?**

3 A. On the single condition, yes.

4 **Q. On a, I'll say, multiple-condition situation?**

5 A. It depends. Sometimes the multiple conditions

6 are within -- are close enough because that demand and

7 discharge ratio is close enough that, um, the accuracy is

8 similar to a single condition system and other times it's,

9 uh, not. And we just have to, uh -- we just have to -- we

10 work very hard at qualifying our name.

11 **Q. But it is time extensive in order to qualify**

12 **your data and to review the information available to you?**

13 A. We're finding it is.

14 **Q. If instead there were TotalizingMeters on the**

15 **various systems, would that reduce the time requirement?**

16 A. I don't say it would reduce the time

17 requirement, because meters are labor intensive in and of

18 themselves.

19 **Q. From a maintenance standpoint?**

20 A. From a maintenance standpoint.

21 **Q. If there was a proper maintenance program in**

22 **place for those meters, would gathering the information and**

23 **utilizing the data streamline the process?**

24 A. It would certainly be much more

25 straightforward.

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1 uh, power demand meter to the pumping plant, which does not

2 operate any other pumps that are not directly related to

3 the system. And where the system operates at a minimum of

4 operating conditions -- currently one, but no more than

5 three -- distinct operating conditions such as the well

6 running the pivot or the well and the booster, perhaps,

7 running the pivot and in-line performance; something to

8 that effect.

9 **Q. So --**

10 A. That is not necessarily the best example.

11 **Q. So from year to year if there's modifications**

12 **made to the irrigation facility would you have to go out**

13 **and review the PCC measurements or the methodology for --**

14 A. Yes.

15 **Q. -- that particular facility?**

16 A. Yes. The PCC measurements are required to be

17 redone every three years just like all (inaudible).

18 **Q. And with respect to PCCs, generally what's the**

19 **accuracy with respect to estimating or calculating water**

20 **delivery or water consumption?**

21 A. I'm only willing to generalize that. On a PCC

22 it is strictly standard operating condition; one pump, one

23 pivot. You get something that's that straightforward, uh,

24 typically I'm very comfortable with a PCC as being within

25 the accuracy that I would expect from a good (inaudible)

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1 **Q. You also discussed the utilization of the**

2 **shape files and the aerial photos in the verification**

3 **process as to whether acres were actually dried up; is that**

4 **correct?**

5 A. That's correct.

6 **Q. Did you also attempt to do some field checking**

7 **of those aerial photos to ensure the accuracy of the**

8 **photos?**

9 A. Yes. We field checked, as I stated, virtually

10 all of the acres which we initially deemed eligible. There

11 were our first cut (inaudible).

12 **Q. And generally speaking, those photos were**

13 **taken twice during the year; once early in the irrigation**

14 **season, once later in the irrigation season?**

15 A. Those are the -- we bought two sets. There's

16 a number of photos available. We bought an early and a

17 late photo.

18 **Q. Okay. Do you recall the expense with respect**

19 **to those photos?**

20 A. They were quite expensive. I mean, \$10,000

21 per seam on one set. Uh, Mr. Luke has more information on

22 the actual purchase price.

23 **Q. The charge for those aerial photos, was that a**

24 **charge that would have been reflected back to the cost for**

25 **the Water District, or would it reflect the cost as**

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1 incurred strictly by the Department?

2 A. That cost was incurred by the Department.

3 Q. As a part of your duties as watermaster, when
4 you go out and administer water and redo the water, do you
5 take further steps to ensure that the water then accrued to
6 the benefit of that party you're expecting it to be
7 delivered to?

8 A. When I was administering a spring or surface
9 water source, yes, that's one of the -- yes, that's one of
10 the follow-up (inaudible) that I make.

11 Q. So with respect to administration within
12 Water District 130, if there is administration of water
13 rights in 130 would you also expect then to go out and
14 confirm that the water actually is delivered to the injured
15 party?

16 A. I believe that's one of my duties, yes.

17 Q. Cindy, would it be a fair characterization to
18 say that -- as part of your verification process that you
19 are trying to ensure that there was an actual change in the
20 water budget for the ESPA with respect to the actions taken
21 by the groundwater district; that is, when you went out to
22 ensure the wells were turned off, for example, that
23 amounted to a change in the amount of water being pumped
24 out of the aquifer?

25 A. Yes. That was one of the goals.

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1 staff in verifying and crediting the actual statement, what
2 would be your estimate?

3 A. At one time it was estimated that
4 approximately 1,000 Departmental staff (inaudible).

5 Q. And with respect to your time, would that be
6 time that would be charged back to the Water District or
7 would that be a separate Departmental charge?

8 A. That one was charged back to the Water
9 District.

10 Q. So would that have been time that would have
11 been taken away from your other watermaster
12 responsibilities in Water District 01?

13 A. Yes.

14 MR. SIMPSON: That's all the question I have.
15 Thank you.

16 VOIR DIRE EXAMINATION

17 BY MR. DREHER:

18 Q. A point of clarification, Ms. Yenter. The
19 recent question about the amount of time -- the thousand
20 hours, is that of your time or everybody's time?

21 A. That was everybody's time.

22 Q. Okay. But it was just your portion of that
23 that would have been charged against the Water District?

24 A. Correct.

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1 Q. So as you stated earlier, you were looking for
2 actual reductions in water being pumped?

3 A. Correct.

4 Q. You testified earlier regarding the standard
5 duty of water referencing the conversions of four acre-feet
6 to the acre.

7 Do you recall that testimony?

8 A. I do.

9 Q. And would that standard duty of water be the
10 standard duty of water for groundwater-irrigated lands in
11 that area?

12 A. Well, to be quite honest, I'm not sure,
13 because four acre-foot value ultimately came from the
14 Director. And so I'm not really sure what his basis was.

15 Q. With respect to your investigation regarding
16 conversions and dry-ups that are reflected in your memos in
17 Exhibits 1 and 2, do you believe that those were reasonable
18 investigations, that the documentation that you put
19 together with respect to those exhibits are reasonable and
20 accounted for in calculating the level mitigation
21 (inaudible)?

22 A. Yes. I believe that it's reasonable and our
23 best effort represents what actually happened.

24 Q. If you had to estimate the amount of time that
25 was required by either Water District staff or Department

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1 MR. DREHER: All right. Thank you.

2 Mr. Fereday, Redirect.

3

4 REDIRECT EXAMINATION

5 BY MR. FEREDAY:

6 Q. Ms. Yenter, with regard to the seepage
7 question, you are aware, are you not, that a number of
8 programs have been undertaken whereby storage water has
9 been diverted into the Northside Canal and allowed to seep
10 out into the aquifer for recharge programs?

11 A. Correct.

12 MR. FEREDAY: No further questions.

13 MR. DREHER: Thank you, Mr. Fereday.

14 Mr. Steenson, Recross.

15 MR. STEENSON: I have no questions.

16 MR. DREHER: Mr. Simpson.

17

18 RECROSS-EXAMINATION

19 BY MR. SIMPSON:

20 Q. Cindy, with respect to the seepage studies you
21 were asked about, was that in regards to water deliveries
22 in 2006?

23 A. Well, I -- I -- I'm actually not -- he said
24 "studies." Maybe I should have, uh -- I don't know that
25 there were studies. I know there were events before it

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1 happened. Uh, early in '06, before it happened, there was
2 this water running in the canals. And some of that water
3 came from a natural flow right at Milner which was a
4 priority.

5 **MR. SIMPSON:** Thank you.

6 **MR. DREHER:** Okay. Ms. Yenter, thank you very
7 much. You're excused.

8 And we'll take, what, a ten-minute recess?

9 **MR. FEREDAY:** Yes. Or five, perhaps?

10 **MR. STEENSON:** Whatever.

11 **MR. DREHER:** Let's do the ten.

12 **MR. FEREDAY:** Okay.

13 (A recess was taken.)

14 **MR. DREHER:** Mr. Fereday.

15 **MR. FEREDAY:** We would like to call Tim Luke,
16 please.

17 **MR. DREHER:** Mr. Luke.

18 Would you raise your right hand, please.

19
20 **TIM LUKE,**
21 having first duly affirmed under oath, testified
22 as follows:

23
24 **MR. DREHER:** You may be seated.
25

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1 correct?

2 A. Correct.

3 **Q.** Where did this 9400 acre-feet go, in your
4 view?

5 A. I don't know. Uh, you know, I do know that
6 20,000 some odd acre-feet, just a little over 20,000, was
7 being reported as being delivered to the conversion project
8 headgates. Uh, roughly, 11,000 or so was delivered, as I
9 understand it -- or reported to have been delivered -- to
10 the Sandy Pipeline. And based on what Northside considers
11 its losses and -- which is, as I understand it, what they
12 figure is 30 percent to back into the 9400.

13 **Q.** You recognize, and I assume agree with
14 Ms. Yenter, that all the water that's in the Northside
15 Canal system is commingled as it's moving down the canal?

16 A. Commingled in the sense of storage water and
17 natural flow?

18 **Q.** Correct.

19 A. Yes.

20 **Q.** And commingled in the sense of water diverted
21 for one user's account as opposed to another water users
22 account. They're all commingled, aren't they?

23 A. Yes.

24 **Q.** So if this water was diverted at Milner and
25 not delivered to the conversions, to the Sandy Ponds or to

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1 DIRECT EXAMINATION

2 BY MR. FEREDAY:

3 **Q.** Mr. Luke, could you please describe what your
4 role is at the Department of Water Resources; your
5 position?

6 A. I am the manager for the water distribution
7 section in the Water Allocation Bureau. And relative to
8 this matter I supervise Cindy Yenter as the watermaster of
9 Water District 130. And I work with various water
10 districts as well the measurement program (inaudible).

11 **Q.** You worked with Water District 01, then?

12 A. Uh, from time to time.

13 **Q.** And you are generally familiar, aren't you,
14 with the subject matter that Ms. Yenter has been testifying
15 about this morning?

16 A. Yes.

17 **Q.** With regard to that 9400 acre-feet of what I'm
18 calling "losses" in the Northside Canal, do you remember
19 the testimony this morning from Ms. Yenter about that?

20 A. Yeah, essentially.

21 **Q.** And that discussion between Ms. Yenter and me
22 had to do with the 9400 acre-feet that was accounted -- was
23 diverted at Milner into the Northside system and paid for
24 by the groundwater districts as storage water, and then not
25 actually delivered because it was counted as a loss,

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1 the other Northside Canal Company shareholders, and not
2 spilled back to the river, then it must have gone into the
3 aquifer, wouldn't you say?

4 A. You know, I can't say for sure. Um, I can
5 only testify that the 9400 was a calculated number.

6 **Q.** It also was a diverted number, was it not?

7 A. Uh, I don't know if it was really diverted. I
8 can only tell you what was reported as being delivered to
9 those field headgates. Um, the 9400 was a calculated
10 number. Uh, you know, I believe water was certainly
11 delivered for conversion projects in Sandy Pipeline through
12 Milner, that's correct. And I think, you know, if you were
13 to look at the -- and there is certainly water reported as
14 being delivered to Milner through Water District 01.

15 **Q.** Do you remember Exhibit 3? And perhaps you
16 would like to refer to it there. Ms. Yenter and I were
17 discussing it during her testimony.

18 Do you have any reason to believe, based on
19 that exhibit, that the 9444 acre-feet were not diverted
20 into the Milner -- excuse me, the Northside Canal at
21 Milner?

22 A. Do I have any reason to believe it wasn't?

23 **Q.** Correct.

24 A. No, huh-uh. I can't really testify to the
25 amount. I can just tell you that what was reported to us

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1 was delivered as -- to the field headgates for the
 2 conversion projects and Sandy Pipeline. And that they were
 3 charged, I think, for 9400 acre.
 4 Q. Okay. Mr. Luke, you're aware of aquifer
 5 recharge programs that have occurred in the past, aren't
 6 you, whereby water has been diverted into ESPA area canals
 7 including the Northside Canal, specifically to recharge the
 8 aquifer through seepage losses; you're aware of those
 9 programs?
 10 A. Uh, yes.
 11 Q. And those programs have occurred in a number
 12 of years in the past, including this year, 2006; isn't that
 13 correct?
 14 A. Uh, I think water diverted to Northside in
 15 2006 was really under Northside's normal natural flow
 16 rights and just part of their charging up the system. To
 17 the extent that there's incidental recharge from that
 18 (inaudible) could be -- there can be incidental recharge as
 19 a result.
 20 Q. And that incidental recharge occurs because of
 21 what?
 22 A. Well, in, like, most canal systems when you're
 23 charging it up at the beginning of the year it's --
 24 conditions are dry and you will lose a fair amount of water
 25 at the beginning of the year.

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1 Q. That would be fine, if you'd like to.
 2 A. I'm not sure which Order that was.
 3 Q. Was that the May 19th Order of Blue Lakes
 4 2005?
 5 A. Probably.
 6 Q. Do you have a copy of it there?
 7 A. I don't think so.
 8 Q. And I think -- was it at Page 21?
 9 A. I don't know. I don't have the Order in front
 10 of me.
 11 Q. Can you remember what it said?
 12 A. Well, I think, uh, it said essentially that
 13 adding the storage delivery to the pond -- Sandy Pipeline
 14 and the conversion projects -- on top of the normal water
 15 delivery to Northside, did not increase recharge by the
 16 same amount for that water.
 17 Q. I believe that was the April 29th, 2006 Order.
 18 Is that your recollection?
 19 A. No.
 20 (Inaudible comment.)
 21 MR. FEREDAY: I'm sorry. Can we go off the
 22 record for a moment?
 23 THE WITNESS: Sure.
 24 (Discussion off the record.)
 25 Q. (BY MR. FEREDAY) I'm showing you the Order

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1 Q. And that will --
 2 A. It's just a matter of maintenance cleaning out
 3 their canals and getting the system charged.
 4 Q. And that water loss will enter the aquifer?
 5 A. Uh, correct.
 6 Q. And losses occur after the canal is charged,
 7 as well, do they not?
 8 A. Correct. Not necessarily at the same rate.
 9 Q. In 2006, water was diverted at Milner into the
 10 Northside Canal under the Idaho Water Resource Board's
 11 recharge water right; isn't that correct? Or am I mistaken
 12 about that?
 13 A. Well, I'm not certain.
 14 Q. So do you know the reason why the Department
 15 of Water Resources did not extend a recharge credit to the
 16 groundwater districts for their conversion and
 17 Sandy Pipeline diversions in 2005, in their mitigation
 18 plan?
 19 A. I think the reason was in the -- one of the
 20 Orders that was -- I believe Mr. Steenson referred to
 21 earlier, and this is Ms. Yenter's testimony.
 22 Q. Could you describe what that reason was --
 23 A. Uh --
 24 Q. -- in your own words?
 25 A. I'd prefer just to refer to the Order.

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1 regarding IGWA Replacement Water Plan dated June 7th, 2005.
 2 Was that the Order you were referring to?
 3 A. Yes, it is.
 4 Q. And I note that you're referring to Page 6 in
 5 paragraph 29 there?
 6 A. Correct.
 7 Q. That states in part "When the canals of
 8 Northside are fully charged and water is already seeping
 9 into the ground, the addition of surface water on top of
 10 existing surface water will not significantly increase the
 11 seepage"?
 12 A. Correct.
 13 Q. Is that right?
 14 A. Yes. That's -- the paragraph says that.
 15 Q. You, Mr. Luke, know yourself whether that is a
 16 true statement?
 17 THE RECORDER: (Inaudible comment.)
 18 MR. FEREDAY (To the Recorder): Well, yeah.
 19 Let's go -- we are back on the record, I hope?
 20 THE WITNESS: I generally compare it with that
 21 premise, yes.
 22 Q. (BY MR. FEREDAY) So it's your position that
 23 the 9400 acre feet that was put into the canal and not
 24 accounted as a seepage credit went somewhere? Or did it go
 25 nowhere?

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1 A. I can't answer that question. I don't know
2 what was actually delivered for that purpose. Again, the
3 9400 acre-feet was what was charged to (inaudible).
4 Q. So you're actually suggesting that maybe that
5 9400 acre-feet never found its way into the canal?
6 A. Um, no, I don't think I'm suggesting that.
7 I'm just saying I don't know.
8 Q. Okay. Let's assume that it did find its way
9 into the canal. Are you saying that it did not go into the
10 aquifer?
11 A. I think some of the water could have gone into
12 the aquifer. Um, I don't know that that storage that was
13 delivered to the canal company was really anymore storage
14 than what's normally delivered to Northside and . . . you
15 know, the -- I -- I don't know the answer.
16 Q. So you don't know where it went, but you
17 don't -- you are not saying that it didn't go into the
18 aquifer; is that correct?
19 A. Correct.
20 Q. The 9400 acre-feet, if, in fact, it was
21 diverted at Milner as we believe it to have been, Mr. Luke,
22 does that water actually just float on top of the other
23 water that's already in the canal, or is it commingled?
24 A. It's commingled.
25 Q. Okay. With regard to the irrigated in 2004

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1 A. I think that would be consistent with the
2 Order.
3 Q. And what do you think is more valuable to the
4 aquifer if the goal is to increase recharge to the aquifer,
5 a well that is turned off for one year or a well that is
6 turned off for more than one year?
7 A. I couldn't answer that question
8 necessarily. It's probably outside of my expertise.
9 Q. Okay. With regard to the Department's
10 determination that some wells were supplemental and,
11 therefore, their curtailment acres could not get full
12 credit, do you recall the testimony this morning from
13 Ms. Yenter?
14 A. Yes.
15 Q. Did you have any role in evaluating or making
16 policy concerning the credit to be given for those acreages
17 where wells were deemed to be supplemental?
18 A. You're referring to the reduction acres?
19 Q. Yes. With reference to reduction acres.
20 A. Um, no. I was involved in discussions, but
21 not any decisions. My involvement was more in the
22 analysis.
23 Q. Do you recall any discussion or analysis of
24 the determination that a 30 percent credit would be given
25 under certain circumstances for those acreages where a

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1 requirement as to credit for voluntary curtailments, did
2 you hear the testimony this morning of Ms. Yenter about
3 that?
4 A. Yes.
5 Q. Could you describe for us the reasons why the
6 Department disqualified from consideration as a curtailment
7 acre those acres that were not irrigated in 2004 with
8 groundwater?
9 A. That was a decision of the Director.
10 Q. Did you have a role in that decision?
11 A. No.
12 Q. Was it due to an interpretation of the
13 groundwater districts' mitigation plan that Mr. Steenson
14 referred to in his colloquy with Ms. Yenter; do you know?
15 A. No, I'm not sure.
16 Q. If the wells that were not pumped in 2004, and
17 whose acreages, therefore, were ineligible, were turned
18 back on tomorrow and then shut off next year, would they
19 come back into eligibility next year because they had been
20 pumped this year?
21 A. Is that just a hypothetical question?
22 Q. That is a hypothetical question, that's right.
23 A. Assuming that we were looking at a mitigation
24 plan next year?
25 Q. Yes.

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1 supplemental well was deemed to exist?
2 A. Are you talking reduction or . . .
3 Q. Reduction, yes. Do you recall that 30 percent
4 figure at all?
5 A. We didn't give 30 percent reduction on
6 supplemental -- or reduction -- on the reduction acres.
7 Q. Didn't you give credit to the tune of
8 30 percent in some circumstances, based on your conclusion
9 that there was a supplemental well usage on the property?
10 A. Well, I thought on reduction acres on
11 supplemental we didn't -- for supplemental there was no --
12 the land continued to be irrigated, but we didn't get any
13 credit. Uh, if the land was not irrigated, then, yes, we
14 did give 30 percent. So if it was land in which the
15 groundwater right was supplemental, it can have water. And
16 if it was not irrigated, you know, we gave 30 percent
17 credit.
18 I'm sorry. I didn't understand your question.
19 Q. Perhaps you can refer to the Exhibit 1 which
20 describes the reduction acre analysis. And I believe if
21 you refer to eligibility code 3 on Page 6 you'll find the
22 notation that it was irrigated in 2004, not irrigated in
23 '05, groundwater supplemental 30 percent credit.
24 A. Correct. And as I just said, yeah -- I didn't
25 understand your question originally -- it was just that.

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1 If it was not irrigated in '05, but irrigated in '04, and
2 it was supplemental, we gave the 30 percent credit.

3 **Q. And why was 30 percent chosen?**

4 A. Uh, that would be a better question or
5 Mr. Wylie -- or Dr. Wylie, but I believe it was a figure
6 from a groundwater model. It was consistent with the
7 groundwater model and how the groundwater model treated
8 supplemental wells. And I can't explain the basis for the
9 30 percent, but I'm pretty certain that's where the figure
10 came from. So we were being consistent with how that
11 situation was applied in the model.

12 **Q. That was not, then, a policy choice that you**
13 **made?**

14 A. No.

15 **Q. What was the Department's policy goal or**
16 **reasoning in declaring a reduction acre would be rejected**
17 **if it were not irrigated with groundwater or in a**
18 **mitigation plan in 2004?**

19 A. Again, that -- that wasn't my decision. I
20 think it just had to do with, you know, actual reduction in
21 modeling acres that just were not irrigated the prior year.
22 I think it was just reviewed as a real reduction; an actual
23 reduction.

24 **Q. Okay. With regard to the excess deliveries**
25 **that we discussed with Ms. Yenter, did you have any role in**

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1 North Snake Groundwater District that Northside was over
2 20,000 acre feet for conversion.

3 **Q. Correct.**

4 A. The Department determined the excess water as
5 a result of the some of conversion project when we looked
6 at the surface water delivery and/or the combined surface
7 water groundwater use under those same projects had it
8 exceeded four acre-feet for being normal duty in that area
9 of groundwater rights.

10 So if particular delivery combined
11 groundwater/surface water use or just surface water
12 exceeded four, we calculated four acre feet at a value
13 associated with four acre-feet. And any additional was
14 viewed as excess and then spread out across the Northside
15 delivery area.

16 **Q. And input to the SPA groundwater model as**
17 **aquifer recharge, correct?**

18 A. Correct. Except that I think some portions
19 of -- of conversion projects and, uh, the excess was
20 actually taken out, because, uh, portions of the Northside
21 Canal service area and some of the conversion projects fell
22 outside of a, uh, area of impact under the delivery call,
23 which was determined by the groundwater model, which has to
24 do with the accuracy. I can't explain it. Dr. Wylie can.

25 So I guess some of the delivery was not actually -- some of

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1 reevaluating or establishing policy with regard to how
2 excess deliveries would be credited?

3 A. You're referring to diversion projects?

4 **Q. Correct.**

5 A. Yeah. I had some role in assisting on the
6 analysis for the data.

7 **Q. The excess deliveries were credited as**
8 **recharge; isn't that correct?**

9 A. They were.

10 **Q. And those were amounts of water that were**
11 **diverted down to Northside Canal, correct?**

12 A. Uh, that was water that was actually reported
13 as diverted at the field headgates by the groundwater
14 district and Northside Canal.

15 **Q. But that water was storage water, was it not,**
16 **that was acquired by the groundwater districts, and then**
17 **delivered into the Northside Canal system?**

18 A. Correct.

19 **Q. So that water was diverted down the Northside**
20 **Canal system, correct?**

21 A. Yes.

22 **Q. Those excess deliveries were credited to**
23 **recharge, correct?**

24 A. Twenty thousand -- referring to . . . -- was
25 reported to the Department from the groundwater district --

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1 the excess -- a small portion of it was not actually
2 counted and -- as well as some conversion for it, because
3 it fell outside of that accuracy.

4 **Q. Outside of that "trimline," if you will?**

5 A. Yes.

6 **Q. But the excess water that did fall within it**
7 **was credited to the aquifer, correct?**

8 A. Correct.

9 **Q. Do you have any explanation as to why the 9400**
10 **acre-feet that was delivered down the canal system was not**
11 **credited to recharge, when this excess that the Department**
12 **found through deliveries was credited to recharge?**

13 **Do you have any explanation for the**
14 **difference?**

15 A. No. Other than, I guess, the one difference,
16 though, is that the Department had accepted that this
17 excess water was part of the water delivered to the canal,
18 and that it was just excess water.

19 **Q. Do you know why the excess water was credited**
20 **across the Northside system, as opposed to being credited**
21 **at the point of delivery?**

22 A. Uh, not for sure. I believe it -- you know,
23 we didn't really know where the water went. It was just an
24 equitable approach, I believe.

25 **MR. FEREDAY: No further questions.**

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<p>1 MR. DREHER: Thank you. 2 Mr. Steenson, Cross. 3 4 CROSS-EXAMINATION 5 BY MR. STEENSON: 6 Q. As with Cindy, since I know you, do you mind 7 if I call you "Tim"? 8 A. No. 9 Q. With regard to four acre-feet per acre, where 10 does that figure come from? 11 A. That is what the Department uses in licensing 12 of water rights and the recommendation of claims in the 13 SRBA for that particular area of the Snake. 14 Q. And it's based on some information that's been 15 developed over time for (inaudible) requirements for the 16 geographic area; is that right? 17 A. Sure. Yes. 18 Q. Now, water delivery in excess of four 19 acre-feet per acre would not be, then, required for 20 irrigation of crops. It has to be used on the land when 21 that occurs; is that correct? 22 A. That's correct. 23 Q. Does it constitute waste in that case? 24 A. It could. 25 Q. What's your understanding of the definition of</p> <p style="text-align: right;">Page 101</p> <p style="text-align: center;">ACCURATE COURT REPORTING, INC. (208) 938-0213 FAX (208) 938-1843</p>	<p>1 Director to provide mitigation by offsetting the entirety 2 of the depletion to the ESPA under such rights," close 3 quote. 4 Are you familiar with that term? 5 A. Yes. 6 Q. Do you agree with Cindy that this is the 7 paragraph with which the plans submitted by IGWA are 8 attempting to comply? 9 A. Yes. 10 Q. Now, what does this phrase mean to you: 11 "Offsetting the entirety of the depletion to the ESPA under 12 such rights"? 13 A. That the amount of water diverted under those 14 rights would be offset. 15 Q. And by "offset" what do you mean? 16 A. Uh, not used or not consumed. (Inaudible.) 17 Q. And the plan -- the alternative that the 18 Director allowed the groundwater districts to pursue, and 19 the alternative which was provided, is not as draconian as 20 that; is that right? It's less severe? 21 A. The plan -- I'm sorry. Repeat the question. 22 Q. That was an oddly phrased question. Let me 23 strike it and I'll try again. 24 As I understand, what is allowed here is a 25 phased-in mitigation by various means over a five-year</p> <p style="text-align: right;">Page 103</p> <p style="text-align: center;">ACCURATE COURT REPORTING, INC. (208) 938-0213 FAX (208) 938-1843</p>
<p>1 waste? 2 A. Water that might be diverted into the system 3 without actually being put to use. 4 Q. And that would be put to the beneficial use 5 for which the water (inaudible), right? 6 A. Yes. 7 Q. So by definition, then, water delivered in 8 excess -- in this case four acre-feet per acre -- wouldn't 9 necessarily be wasted, would it not? 10 A. Would it be waste? 11 Q. Yes. Unless the water right includes recharge 12 of the beneficial use? 13 A. Right. It's above the limit of what would be 14 authorized. 15 Q. Now, with respect to the recurring questions 16 about 2004, I'm going to ask you some of the same questions 17 I asked Cindy. 18 I'm referring back to the May 19, 2005 Order 19 on the Blue Lakes water delivery demand. 20 I assume you're familiar with that Order? 21 A. Yes. 22 Q. And specifically with respect to this portion 23 of the Order that occurs at Page 28, it requires by May 30, 24 2005, that groundwater rights later in time than December 25 28, 1973, must, quote, "submit a plan or plans to the</p> <p style="text-align: right;">Page 102</p> <p style="text-align: center;">ACCURATE COURT REPORTING, INC. (208) 938-0213 FAX (208) 938-1843</p>	<p>1 period; is that correct? 2 A. That's right. 3 Q. Okay. Now, with regard to 2004, number one, 4 that was what IGWA's plan called for IGWA to provide; isn't 5 that correct? 6 A. The mitigation plan submitted by May 30th? 7 Q. Yes. The mitigation plan that the groundwater 8 districts submitted called for reducing voluntary 9 reductions in acres that had actually been irrigated in 10 2004. Do you recall that? 11 A. Yes. 12 Q. Let me see if I can refresh your memory. 13 A. Are you asking that the groundwater 14 districts -- what they submitted as reduction acres that 15 they were saying that they were irrigated in '04? 16 Q. Yes. Do you recall that? 17 A. You know, they submitted reduction acres and 18 we applied the criteria from the Director's Order of 19 whether it was irrigating (inaudible). I don't know that 20 they were admitting one way or the other. 21 Q. In terms of this question, referring you to 22 the groundwater districts' plan to provide replacement 23 water submitted in May of 2005, at Page 5, in which under 24 the heading "Study Reach Gains from Additional Voluntary 25 Curtailment of Groundwater Irrigation Pumping in 2005,"</p> <p style="text-align: right;">Page 104</p> <p style="text-align: center;">ACCURATE COURT REPORTING, INC. (208) 938-0213 FAX (208) 938-1843</p>

1 there's the following sentence, quote, "Both districts are
2 requesting, through written notices, that all district
3 members reduce their water-irrigated acres by ten percent,
4 as compared to their 2004 irrigated acreage, and provide
5 documentation to the districts by July 1 of all reductions
6 that were taken," close quote.

7 That means, does it not, that they're
8 proposing that they're going to take -- their voluntary
9 curtailment will be curtailment of acres that were actually
10 irrigated in 2004; is that correct?

11 A. That's what it would mean to me.

12 Q. Okay. And then the Department in its -- the
13 Director in its May 19th, 2005, Order with regard to
14 Blue Lakes (inaudible) recognized that Blue Lakes was
15 significantly short of water, did it not?

16 A. One or more of their rights, correct.

17 Q. Correct. And wasn't, then, this deemed by the
18 Director to be a reasonable alternative to closed sale
19 curtailment by priority, that the voluntary curtailment
20 that would occur in lieu of involuntary closed sale
21 curtailment would at least be a reduction in actual
22 depletions from the aquifer that occurred in 2004, as
23 offered by the groundwater district?

24 A. Yes.

25 Q. Now, on this question of seepage, referring to
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1 this word to which you have been referred previously by
2 Mr. Fereday, and it's entitled "The Order Regarding IGWA
3 Replacement Water Plan," from June 7, 2005. I'm referring
4 now to Page 13, paragraphs 4 and 5, wherein paragraph 4 it
5 states "IGWA did not present any technical analysis of the
6 actual additional seepage losses in the Northside Canal
7 Company delivery system resulting from delivery of the
8 additional surface water. The Department cannot credit
9 takeover replacement gains unless the gains are computed
10 based on actual seepage data for the surface water added to
11 the Northside Canal Company for the system," close quote.

12 Now, to your knowledge, has IGWA provided what
13 this Order is calling for in that paragraph; that is,
14 actual seepage data for technical analysis of actual
15 additional seepage losses?

16 A. No.

17 Q. And do you know is it the Department's view
18 that it currently continues to need that information for
19 credit for seepage losses that are being sought by the
20 groundwater districts for credit?

21 A. Yes, it would.

22 MR. STEENSON: Okay. That's all I have.
23 Thank you.

24 MR. DREHER: Thank you.

25 Mr. Simpson.

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CROSS-EXAMINATION

2 BY MR. SIMPSON:

3 Q. Mr. Luke, I'll refer you to Exhibit 3, if you
4 would.

5 And if you recall Ms. Yenter's testimony this
6 morning regarding the source of Exhibit 3, do you know the
7 source of Exhibit 3?

8 A. Uh, I didn't work with this specifically, but
9 it looks like deliveries -- I have seen it before, I
10 believe, but it looks like deliveries in the conversion
11 projects from Northside Canal Company that were transmitted
12 to us by North Snake Groundwater District.

13 Q. Do you know who compiled this information;
14 who the author of this document was?

15 A. Uh, I believe it was Northside Canal Company.

16 Q. So it's your understanding that Northside
17 generated this document?

18 A. Well, the data, certainly, is from Northside.

19 Q. But as to the authorship of this document, as
20 you sit here today, do you know who the author is?

21 A. Well, I thought the numbers were put into a
22 spreadsheet by North Snake Groundwater District based on
23 the data they had from Northside.

24 Q. In your view, Mr. Luke, is the use of the
25 power consumption coefficient the most accurate way to

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1 measure the volume of water pumped from a well?

2 A. Well, I'd like to say pretty much everything
3 that Ms. Yenter said. For simpler systems it is, uh, I
4 feel, a pretty accurate way of doing it, just as well as
5 any other method. In more complex systems it (inaudible).

6 Q. In more complex systems, what would be utilized
7 if you were not to use the PCC?

8 A. Uh, as Ms. Yenter said, flowmeters, uh,
9 Hot Box, additional -- anything that monitors the water
10 (inaudible).

11 Q. And if those were maintained properly those
12 would ease the calculation with respect to water users?

13 A. To some conversions.

14 Q. You testified that you supervise Ms. Yenter
15 along with the other watermasters. Would that be correct?

16 A. Uh, Cindy is an employee of the Department, so
17 I supervise her. Other watermasters are elected or --
18 well, Cindy has been elected, as well, but many of the
19 watermasters they are not direct employees (inaudible). I
20 have guidance -- some guidance with (inaudible) over those,
21 but not a day-to-day supervisor.

22 Q. With respect to that guidance of those
23 watermasters who are also employees of the Department,
24 would it be fair to say that during administration you
25 would direct those watermasters to confirm that the actions

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<p>1 they're taking actually deliver water to the agency in your</p> <p>2 water right (inaudible)?</p> <p>3 A. Yes. Directions from the -- or Orders from</p> <p>4 the Director.</p> <p>5 Q. And in this case, for example, if there was an</p> <p>6 Order in place directing mitigation that actually is to</p> <p>7 take place, would it also be part of Cindy's duties or</p> <p>8 would you request that she confirm that the water rights</p> <p>9 reaches the injured party?</p> <p>10 A. Um, well, in this particular case I was</p> <p>11 directing working with Cindy on confirming that the</p> <p>12 mitigation plan, as accepted by the Department, was being</p> <p>13 implemented. And that we could confirm deductions,</p> <p>14 conversions, for her (inaudible).</p> <p>15 Q. You think as part of that confirmation that</p> <p>16 there also should be a provision which identifies whether</p> <p>17 or not the water deliveries to the injured parties are</p> <p>18 actually being received?</p> <p>19 A. Well, we have a process of collecting</p> <p>20 conversion data from those injured parties, so we certainly</p> <p>21 have data that -- phased mitigation (inaudible) times.</p> <p>22 That should be part of it.</p> <p>23 Q. Part of the overall adaptive management -- if</p> <p>24 you will -- of processing, would it be you look to confirm</p> <p>25 whether or not the benefits of the action will actually be</p> <p style="text-align: right;">Page 109</p> <p style="text-align: center;">ACCURATE COURT REPORTING, INC.</p> <p>(208) 938-0213 FAX (208) 938-1843</p>	<p>1 45 minutes.</p> <p>2 (A recess was taken.)</p> <p>3 MR. DREHER: Mr. Fereday, call your next</p> <p>4 witness.</p> <p>5 MR. FEREDAY: We would like to call</p> <p>6 Dr. Allan Wylie.</p> <p>7 MR. DREHER: Dr. Wylie if you would raise your</p> <p>8 right hand for me, please.</p> <p>9</p> <p>10 ALLAN H. WYLIE, PH.D.,</p> <p>11 having been duly affirmed under oath testified</p> <p>12 as follows:</p> <p>13</p> <p>14 MR. DREHER: Thank you. You may be seated.</p> <p>15</p> <p style="text-align: center;">DIRECT EXAMINATION</p> <p>17 BY MR. FEREDAY:</p> <p>18 Q. Dr. Wylie, state your name and give your</p> <p>19 position at the Department of Water Resources.</p> <p>20 A. I'm Allan Wylie, and I'm in the Groundwater</p> <p>21 Modeling Unit here at the Department of Water Resources.</p> <p>22 Q. And what are your duties there?</p> <p>23 A. Um, modeling with the Department's Snake Plain</p> <p>24 Aquifer Model, and, uh, developing models in other areas.</p> <p>25 Q. Is it your job to answer questions that the</p> <p style="text-align: right;">Page 111</p> <p style="text-align: center;">ACCURATE COURT REPORTING, INC.</p> <p>(208) 938-0213 FAX (208) 938-1843</p>
<p>1 received?</p> <p>2 A. I think the data should be looked at, yes.</p> <p>3 MR. SIMPSON: That's all the questions I have.</p> <p>4 MR. DREHER: Thank you.</p> <p>5 Mr. Fereday, Redirect.</p> <p>6 MR. FEREDAY: Just a minute.</p> <p>7 MR. DREHER: Okay.</p> <p>8 MR. FEREDAY: No further questions.</p> <p>9 MR. DREHER: Okay. Thank you.</p> <p>10 Mr. Fereday, how many more witnesses do you</p> <p>11 plan to call?</p> <p>12 MR. FEREDAY: Four.</p> <p>13 MR. DREHER: Four. Okay. If it's agreeable,</p> <p>14 I think we probably should break for lunch. What would you</p> <p>15 suggest timewise?</p> <p>16 MR. FEREDAY: 45 minutes?</p> <p>17 MR. DREHER: Okay.</p> <p>18 MR. FEREDAY: Do you think it's possible to</p> <p>19 get done today?</p> <p>20 MR. DREHER: We're going to try to get done</p> <p>21 today if we can. We're going to break for 45 minutes. And</p> <p>22 again, as I've cautioned people previously at meetings</p> <p>23 here, if you decide to cross the street please look because</p> <p>24 the cars do not necessarily obey the crosswalk signals. I</p> <p>25 would like to see you back here. With that, we're done for</p> <p style="text-align: right;">Page 110</p> <p style="text-align: center;">ACCURATE COURT REPORTING, INC.</p> <p>(208) 938-0213 FAX (208) 938-1843</p>	<p>1 Director or other managers of the Department have about</p> <p>2 what various well curtailment scenarios might do in the</p> <p>3 Eastern Snake Plain aquifer according to the Model?</p> <p>4 A. Yes.</p> <p>5 Q. And have you done that on several occasions?</p> <p>6 A. Yes.</p> <p>7 Q. Did you have the experience with development</p> <p>8 of the Model and its calibration over the last few years?</p> <p>9 A. Yes, I did.</p> <p>10 Q. What has been your role in analyzing the</p> <p>11 mitigation credits that we have been discussing during this</p> <p>12 hearing? I understand you have been listening in on this</p> <p>13 hearing?</p> <p>14 A. That's correct. Um, I would guess the</p> <p>15 numbers. Uh, in the case of the conversions, I got the</p> <p>16 amount of water that was delivered to the well, and I put</p> <p>17 that into the Model and analyzed what the gains would be</p> <p>18 for the respective river reaches.</p> <p>19 Q. When you say the amount of water delivered to</p> <p>20 the wells, do you mean the amount of storage water that the</p> <p>21 groundwater districts delivered down to lands previously</p> <p>22 irrigated with groundwater?</p> <p>23 A. The amount of water delivered to the field</p> <p>24 headgate.</p> <p>25 Q. Okay. Down the Northside Canal, correct?</p> <p style="text-align: right;">Page 112</p> <p style="text-align: center;">ACCURATE COURT REPORTING, INC.</p> <p>(208) 938-0213 FAX (208) 938-1843</p>

1 A. Yes.
2 Q. Did you hear the discussion today about the
3 relative benefit of shutting off a supplemental well --
4 there was some testimony about the issue of supplemental
5 wells. Did you hear that today?
6 A. Yes, I did.
7 Q. Has your work with modeling ever included
8 evaluating what the effect of shutting off supplemental
9 wells might be? Have you ever looked at the supplemental
10 well question?
11 A. So your question is, uh, land irrigated
12 partially by surface water and partially by groundwater?
13 Q. That's correct.
14 A. And then what would be the effect of turning
15 off the groundwater well?
16 Q. Correct.
17 A. Um, you're asking how we -- how we evaluated
18 that?
19 Q. Yes. How, in general, you have evaluated
20 those kinds of situations in the past using the Model; if
21 you have.
22 A. The, uh -- in this case we weren't supplied
23 with any case what percentage of the time the groundwater
24 well was used. So we used the number that we determined
25 during model calibration that, in general, lands in the

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1 THE RECORDER: (Inaudible comment.)
2 MR. DREHER: Ah. Okay. All right. I knew
3 something was missing. Okay. Excuse me. You may proceed.
4 Q. (BY MR. FEREDAY) In those evaluations that
5 led to the 30 percent figure, did you assume that
6 groundwater deliveries, a duty of water, would be four
7 acre-feet per acre of diversions from that groundwater
8 well?
9 A. Uh, we were assuming that the groundwater and
10 surface water combined would yield a four acre-feet per
11 acre.
12 Q. Have you evaluated what the typical diversion
13 for a groundwater-irrigated acre is in the Northside Canal
14 Company service area where only groundwater is used; what
15 the duty of water typically would be there?
16 A. No, I have not.
17 Q. Do you believe that it would be the same --
18 that is four acre-feet -- as it is with surface water?
19 A. I guess in the absence of any other
20 information I would have to accept four.
21 Q. The duty of water of four acre-feet, if it is
22 water that is delivered down the Northside Canal it
23 involves more than that, doesn't it, to get it there to the
24 field headgate to carry water?
25 A. Yes. There are losses.

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1 Northside service area uses the groundwater 30 percent of
2 the time. So that's the number we used.
3 Q. The 30 percent number, then, came through your
4 previous experience using the Model for mixed source
5 irrigation land -- mixed being ground and surface?
6 A. Yes.
7 Q. Do you know how those data were gathered with
8 regard to the previous model runs? How long a particular
9 well is run and how much -- surface water irrigation and so
10 forth, how those data were collected?
11 A. Um, the -- we used the water duty number that,
12 uh, it took about four acre-feet -- four feet of water per
13 acre to adequately irrigate land in the Northside area.
14 And then, um, saw how much, uh, water was left over for the
15 mixed land, and then figured that they had to
16 make up the difference using groundwater.
17 Q. Based on a four-acre foot per acre delivery at
18 the field --
19 A. At the field headquarters, yes.
20 THE RECORDER: (Inaudible comment.)
21 MR. DREHER: Mr. Fereday, if you could pause
22 for a moment, we're not sure we're picking up Dr. Wylie's
23 responses here.
24 (To the Recorder): Okay. So we don't have
25 the digital recorder anymore?

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1 Q. Do you think that the losses of somewhere in
2 the range of 30 percent in the Northside system are a
3 fairly reasonable or reliable figure to use -- 30 percent?
4 A. I've heard it commonly used. I -- I don't --
5 don't know if it's been measured, but I've heard it very
6 commonly.
7 Q. Would that surprise you that it would be as
8 high or as low as 30 percent, or does that sound like a
9 reasonable number, in your experience, for canal losses?
10 A. Uh, I don't -- it didn't sound -- doesn't
11 sound shocking to me.
12 Q. Okay. To your knowledge, has there been any
13 study done of losses in the Northside Canal system?
14 A. None that I'm aware of.
15 Q. The Model has been structured so that it can
16 evaluate the effects of seepage from canals and laterals on
17 the aquifer; isn't that correct?
18 A. That's correct.
19 Q. Could you describe to us how the Model looks
20 at canal seepage?
21 A. During calibration?
22 Q. Well, first during calibration and then
23 through an -- a sample model run.
24 A. During calibration we took a -- just a
25 percentage of the water delivered, much the way the canal

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1 companies, uh, figure it. So just from the delivery map
2 out, the trace of the canal, and, uh, subtract off the
3 percentage -- that percentage over that reach of the canal.
4 Once it got to the service area, then, uh, we
5 typically did not put in the -- the canals and laterals,
6 because water lost in the service area was much like, uh,
7 deep percolation during irrigation.
8 **Q. So the Northside Canal was modeled in that**
9 **context as part of the calibration exercise for the Model?**
10 A. That's right.
11 **Q. And I take it, then, that the Model**
12 **calibration was assuming that losses in the main canal of**
13 **whatever number was accepted -- let's take 30 percent --**
14 **found its way into the aquifer?**
15 A. That's correct.
16 **Q. And the amount of water that was delivered out**
17 **of the main canal into the network of laterals and on to**
18 **actual irrigated lands, that was a second subset of loss,**
19 **if you will; is that correct?**
20 A. That's correct.
21 **Q. And that subset of loss was subject to another**
22 **coefficient. Whether it was 30 percent or 15 percent, it**
23 **was another coefficient; is that right?**
24 A. No. Once it reached the service area, in most
25 cases we just took, uh, the water that reached the service

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1 A. We did an analysis on the Northside Canal,
2 that's correct.
3 **Q. Do you recall how much water was used in the**
4 **Northside Canal, or diverted into the Northside Canal for**
5 **that exercise, at least according to your model work?**
6 A. I think we were looking at a potential
7 recharge of right around 300 cfs diversion. And there was
8 some assumption about how far that water would make it down
9 the canal.
10 **Q. Do you recall what the results of that model**
11 **run were -- how much recharge occurred?**
12 A. Uh, it would -- it was all of it. Uh, there
13 was some assumption that the 300 cfs, it would get so far
14 down the canal. I don't remember how far. But all of it
15 was recharge.
16 **Q. With regard to the groundwater districts'**
17 **conversions and acreage reductions that we have been**
18 **discussing today, you've heard, haven't you, the testimony**
19 **concerning the fact that the Department did not extend any**
20 **seepage credit as recharge for the deliveries to**
21 **conversions, for example, and to the Sandy Pipeline and**
22 **Ponds Project? Have you heard that?**
23 A. I have heard that, yes.
24 **Q. Do you know why the Department did not extend**
25 **that credit for seepage losses for the water carried to**

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1 area less ET. And then the rest of that went in as aquifer
2 recharge.
3 **Q. Okay.**
4 A. Less ET and precip.
5 **Q. Yes. Moving forward from calibration, the**
6 **calibration exercises of the Model, have you used the Model**
7 **or seen it used to evaluate the effects of seepage losses**
8 **from canals, laterals, or surface water irrigation; the**
9 **effects on the aquifer?**
10 A. Surface water irrigation, I've not done it
11 with canals.
12 **Q. Okay --**
13 A. Well, uh, this spring we looked at potential
14 recharge operations on canals.
15 **Q. Could you describe that exercise this spring**
16 **with regard to using the Model to predict recharge from**
17 **canals?**
18 A. Just, uh, took a shape file and laid it
19 over -- of the canal, laid it over the Model grid, and
20 selected all the cells in the Model grid that intersected
21 the canal shape file. And extracted that information and
22 put in, uh, a uniform linkage value and -- and ran the
23 Model.
24 **Q. Is the Northside Canal included in that**
25 **analysis this spring?**

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1 **those projects?**
2 A. I -- I'm afraid you would have to look pretty
3 hard to find somebody more ignorant on policy than me.
4 **Q. I take it that's a "no"?**
5 A. I have no idea.
6 **Q. And because that's a policy question, is that**
7 **right?**
8 A. That's right.
9 **Q. I'd like to ask you a hypothetical question**
10 **about a hypothetical well a few miles back from the canyon**
11 **rim in an area that would be relevant to the Blue Lakes or**
12 **Clear Springs facilities that we're discussing today.**
13 **If that well is shut off for one year it will**
14 **have a certain-predictable effect, according to the Model,**
15 **correct?**
16 A. Correct.
17 **Q. On those spring flows?**
18 A. Uh-huh.
19 **Q. Is that a "yes"?**
20 A. That's a "yes." Sorry.
21 **Q. And if that well is kept off for a period of**
22 **years, that -- what will be the effect of that -- of that**
23 **shutoff on the spring?**
24 A. It will slowly increase.
25 **Q. With regard to the 9400 acre-feet that you've**

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1 heard us discuss at some length already today, do you have
2 an opinion as to where that 9400 acre-feet went that was
3 diverted into the Northside Canal and then was not
4 delivered to actual diversions out onto the ground at the
5 conversion sites or into the Sandy Pipeline?

6 A. There -- I think there are three possible
7 fates; one would be evaporation, one would be deep
8 percolation, and the other would be returns.

9 Q. Deep percolation would be recharge to the
10 aquifer?

11 A. Recharge to the aquifer, yes.

12 Q. Would you expect that that 9400 acre-feet
13 would have a fate any different from any other similar
14 component of water in the canal over that irrigation
15 season?

16 A. No.

17 Q. With regard to the 1380 acre-feet, do you
18 recall what that number was referring to?

19 A. The amount of water delivered to the
20 conversion acres.

21 Q. That was excess of the duty of water four
22 acre-feet per acre?

23 A. Yes.

24 Q. Do you recall that testimony to the effect
25 that that water was recognized as having recharged the

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1 A. Um, my -- my opinion is that, you know, it was
2 measured as being delivered to the field, uh, it ought to
3 be put in at the field.

4 Q. Okay. Do you agree that the dry-up of even a
5 very small parcel of irrigated land on the ESPA that's
6 irrigated with groundwater would have a positive effect on
7 aquifer recharge, or would result in a decrease in
8 depletions of the aquifer, if you will?

9 A. It would.

10 MR. FEREDAY: No further questions.

11 MR. DREHER: Okay. Mr. Steenson.

12 CROSS-EXAMINATION

13 BY MR. STEENSON:

14 Q. Mr. Wylie, I'm Dan Steenson. I represent
15 Blue Lakes Trout Farms. We haven't met.

16 A couple of questions. You just mentioned
17 that you lobbied for a certain way in model calibration or
18 treating water delivered to converted acres, correct?

19 A. That was a model use not calibration.

20 Q. Calibration?

21 A. Yes.

22 Q. Can you describe -- you know, explain that
23 lobbying process that you just mentioned to me, what did
24 you mean by that lobbying for (inaudible)?

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1 aquifer? Do you recall that?

2 A. Yes.

3 Q. Did you have a role in determining that -- or
4 evaluating it?

5 A. I, um, had a role discussing -- involved in
6 discussing what to do with it, as well as doing the
7 evaluation, yes.

8 Q. Could you describe what the substance of
9 those considerations were, with regard to the 1380 or the
10 excess water? Why was it determined, for example, that it
11 would be spread through the Northside system?

12 A. There was some concern, because it was above
13 the four acre-feet of common water duty in the area. There
14 were some, uh -- I guess I can say I lobbied that that
15 water should be put back -- put in, uh -- into the Model at
16 the spot where the well was.

17 Now, there was, uh, some concern that it was
18 above the four acre-foot water duty, so it shouldn't be put
19 in like that. And the resulting, as you saw, was that it
20 was spread over the surface-water irrigated lands within
21 the Northside surface area.

22 Q. And scientifically which is more reliable, in
23 your view, in terms of evaluating the recharge effect, to
24 calculate it as having been spread, or calculate it at the
25 site of the converted acre?

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1 A. I just said that, you know, if, uh, the
2 groundwater users had, uh, leased that water and that it
3 was delivered to that field, then they ought to get full
4 credit for it.

5 Q. How much have you lobbied for that would you
6 explain?

7 A. I believe, um, Mr. Spackman, Mr. Luke,
8 Cindy Yenter, and the Director were involved in those
9 discussions.

10 Q. Was that a frequent occurrence that with
11 regard to some particular use of the Model or some -- other
12 other issues related to the Model there were issues that
13 were the subject of some opinion and debate and resolution
14 through group discussion (inaudible)?

15 A. No.

16 Q. Were there any other issues where you or
17 someone else would have lobbied one perspective against
18 another perspective and another one lobbied by somebody
19 else used in developing the Model?

20 A. During development, yes, there were extensive.
21 But that's not the focus of this.

22 Q. (Inaudible.)

23 A. Uh, during model development there were many
24 discussions about how to go about developing the Model.

25 Q. Okay. And by that do you mean people would

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1 have varying opinions and agreements, disagreements about
2 issues between the Model?
3 A. I'd say -- I could give you an example. Would
4 that --
5 Q. That would be fine.
6 A. Okay. During model development, um, we
7 were -- we discussed how to handle tributary underflow.
8 That's, uh, flow into the aquifer from, uh, surrounding
9 aquifers. So we debated how to handle that. And there
10 was -- there was an extensive debate.
11 Some people wanted to have, uh, a seasonal
12 change in that signal, so that nearing, say, spring maybe
13 the recharge coming in through the tributary basins would
14 be higher and in the fall it would be lower. And some
15 people thought we really don't know what it looks like,
16 and, uh, assigning so much detail to it might erroneously
17 lead somebody to conclude that we know more about the flow
18 into the aquifer than we do. In the end, we wound up
19 changing it during wet years up and dry years down, but
20 leaving it on an annual basis was flat.
21 Q. And so as a result in this particular example
22 the consensus conclusion, I would take it, may or may not
23 represent reality. It represents debate, discussion, and
24 consensus.
25 But I take it there's a level of uncertainty

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1 in terms of knowing whether or not your consensus decision
2 represents reality?
3 A. That's correct.
4 Q. And that was an example of other circumstances
5 in which that kind of discussion and resolution of issue
6 process in total; is that correct?
7 A. That's correct.
8 Q. Okay. Now, with respect to canal seepage,
9 considering a canal in cross-sections it looks kind of
10 like a -- generally a canal would look somewhat "U" shaped
11 with banks on the outer edges of the "U" and with a body?
12 A. That's correct.
13 Q. Now, the amount of water lost, I take it, from
14 the 300 cfs example we discussed, isn't it correct that the
15 amount of water lost from a half-flow canal would be a
16 greater percentage of the water in that canal than the
17 amount of water lost from a three quarters flow of a full
18 canal?
19 A. For instance, a hundred percent of the 300 cfs
20 we thought would have been lost.
21 Q. And that would occur because the canal can
22 carry a whole lot more than that amount of water, correct?
23 A. That's correct.
24 Q. So if you have a canal that's already had that
25 initial wetting to begin part of the irrigation season --

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1 are you familiar with that process?
2 A. Yes.
3 Q. And it's already hearing (phonetic), after
4 that wetting process, three quarters or more with capacity,
5 isn't it fair to say that the incremental addition of water
6 to that canal results in a lower percentage seepage than
7 the percentage loss from a less full canal?
8 A. So what you're asking is if we add a little
9 bit to an almost multiply full canal are we substantially
10 going to change the leakage? No, we aren't going to
11 substantially change it.
12 Q. So would it be fair to say that there would be
13 somewhat of a gradient, if you will, in loss from a hundred
14 percent in an empty canal to -- as a percentage --
15 A. Uh-huh.
16 Q. -- to something closer to zero in the
17 incremental addition to a full canal?
18 A. Probably not zero, but you would ositonally
19 (phonetic) approach some value, in the Northside presumably
20 pretty close to 30 percent.
21 Q. And the 30 percent number is a number -- I
22 guess I would suggest to you that it's a received number,
23 as far as you're concerned, not one that you know of any
24 basis for?
25 A. That's right.

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1 Q. So I'll represent to you that the Department
2 Director issued an order entitled "Order regarding IGWA
3 Replacement Water Plans," with reference to the Blue Lakes
4 water delivery call, and it's dated June 7th, 2005, in
5 which it was suggesting that -- or it was stating that it
6 needed, quote, "technical analysis of the actual additional
7 seepage losses in the North Snake."
8 Now, North Snake and the NSCC delivery system,
9 resulting from the delivery of additional surface water,
10 further suggested that the Department cannot credit IGWA
11 with replacement gains unless the gains are computed based
12 on actual seepage data or the surface water added to the
13 NSCC delivery system," close quote.
14 So doesn't that sound reasonable that to
15 assign a value to the incremental addition to the canal at
16 some amount of water, rather than just use some received 30
17 percent figure, there needed do be some technical basis for
18 that incremental addition of seepage?
19 A. Yes. Uh, I think that's saying that the
20 Department needs to know what's happening to that water in
21 order to give anybody credit for it.
22 Q. Now, 30 percent is a figure, then, when you
23 have calculated, uh -- done all the runs to calculate the
24 effect of irrigation deliveries on aquifer levels over
25 time. As I note, you're done getting a description that

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1 you can work with here to understand in terms of working.
2 I take it you've used 30 percent as the figure for
3 contributions to the aquifer from canals such as the
4 Northside Canal. When you have modeled the effect of
5 irrigation over the last hundred years or so on the ESP, is
6 that the loss figure that you used; 30 percent?

7 A. Yeah. Over the calibration period.

8 Q. And you have done -- as a result of these
9 model runs -- you developed information to suggest the
10 impact of irrigation on aquifer levels over time; is that
11 correct?

12 A. That's correct.

13 Q. But, again, it's based on a 30 percent figure
14 about which you have no technical basis; is that correct?

15 A. Yes. They're -- they're received numbers.

16 MR. STEENSON: Thank you. I have nothing
17 further.

18 MR. SIMPSON: Mr. Simpson.

19 MR. SIMPSON: I have no questions.

20 MR. DREHER: Mr. Fereday, Redirect.

21 MR. FEREDAY: Just one moment, please.

22
23 REDIRECT EXAMINATION

24 BY MR. FEREDAY:

25 Q. Dr. Wylie, with regard to the 30 percent loss

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1 A. I would have included that in the evaporation,
2 but yes, that's it.

3 Q. Okay. Secondly, um, I want to address your
4 term -- your use of the word "lobbied."

5 Wouldn't a better description of what you
6 described be you had a proposal?

7 A. I had a proposal, yes.

8 Q. Okay. And in terms of that process, for the
9 sake of the record, I want to make it clear that when you
10 were describing the discussions in consideration of various
11 proposals for handling tributary underflow, that was not
12 discussions within the Department, per se, that was
13 discussions amongst the technical modeling committee that
14 included consultants representing various interests; is
15 that not correct?

16 A. That -- yes. It was the Eastern Snake
17 Hydrologic Modeling Committee where those discussions took
18 place.

19 Q. And then related to that, when you
20 described -- you were asked the question who was involved
21 in the deliberations about what to do with the excess water
22 beyond the four acre-feet per acre, you mentioned
23 Mr. Spackman, Mr. Luke, and Ms. Yenter, and you mentioned
24 me. But I didn't make the decision as to how to spread
25 that excess water, as I recall; did I?

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1 in the Northside Canal, and that being a received number,
2 isn't it a fact that the Model development and calibration
3 used that number?

4 A. Um, I don't remember the actual number used,
5 but I, uh, suspect that Bryce Contour, who set that up,
6 consulted with Ted Diehl and got an order from Mr. Diehl.

7 MR. FEREDAY: No further questions.

8 MR. DREHER: Okay. Thank you.

9 Dr. Wylie, I do have a couple points of
10 clarification.

11
12 VOIR DIRE EXAMINATION

13 BY MR. DREHER:

14 Q. First off, I missed what you said you thought
15 would be the fate of the 9450 acre-feet of water. What was
16 the fate that you had said?

17 A. I said there were three possible things. It
18 could be loss to evaporation, it could, uh, be loss to deep
19 percolation, and it could, uh, go to returns -- a return to
20 the river.

21 Q. Okay. Isn't there a fourth possibility
22 wherein that water may have been diverted by the canal and
23 wasn't lost to evaporation; deep percolation? And what
24 didn't return to the river would have been distributed to
25 other shareholders on the Northside Canal system?

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1 A. I don't remember, um -- I guess all I remember
2 is that it wound up getting dispersed.

3 Q. And in a related question, when I ask you to
4 simulate some particular set of circumstances using the
5 Model, I don't tell you how to do that, do I?

6 A. No.

7 Q. One last point of clarification. This morning
8 Ms. Yenter testified that when water was -- and I'm
9 paraphrasing it as best as I can remember it, when water
10 was delivered to conversion acres that were served with the
11 supplemental well, then the amount of groundwater pumped or
12 withdrawn through that supplemental well was subtracted
13 from the credit that was given for the surface water
14 conversion, and I didn't remember that that's the way that
15 was done.

16 A. No, I took the amount of water that was
17 delivered to the acres -- the conversion acres. I didn't
18 subtract the pump water.

19 Q. So if -- if, in fact, the -- there were
20 supplemental wells that were -- that were used during the
21 year when surface water was being delivered for purposes of
22 conversion, we didn't -- we just presumed that that didn't
23 have any effect; is that correct, number one? And number
24 two, is that a valid way to address that?

25 A. In a sense the water that is pumped -- or the

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1 water that's delivered to the field, uh, we're assuming
2 it's either, uh, so it can go to ET or it can go to deep
3 percolation. So given -- either flavor of water suffers
4 those same two fates. It doesn't matter whether, uh, we
5 take into consideration the pumped water.

6 Because the delivered surface water will go to
7 satisfy ET or infiltrate back into the aquifer. And it
8 would be the same in the Model as if that water had been
9 pumped by a groundwater well. So if what we want to look
10 at is the effect of the conversion, then just looking at
11 the converted water gives us the clearest picture of the
12 effect of the conversion.

13 MR. DREHER: Thank you. Now, I guess because
14 I asked some extensive questions, Mr. Fereday, if you would
15 like to Redirect at this point I would give you that
16 opportunity.

17 MR. FEREDAY: Yes. Thank you.

18 REDIRECT EXAMINATION

19 BY MR. FEREDAY:

20 Q. Dr. Wylie, with regard to your testimony just
21 now about supplemental wells on converted acres, did I
22 understand you to say that the supplemental wells pumping
23 was ignored?

24 A. That would be correct.

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1 conversion land for (inaudible) was an issue that we
2 discussed at the information hearing a week or so ago.
3 And -- my eyes are pretty bad (inaudible).

4 CROSS-EXAMINATION

5 BY MR. SIMPSON:

6 Q. Well, Dr. Wylie, let's say, for example, that
7 on a conversion parcel of 75 acres that was delivered to
8 that parcel, we'll say 362 acre-feet, would it not be true
9 that for that particular conversion that they would only
10 get credit for that conversion of (inaudible) feet? That's
11 what they would get credit for with respect to the
12 conversion water, correct?

13 A. That's, let's say, another hypothetical
14 situation that I can do math for.

15 Q. Well, that's why I tried to use 75 acres
16 times 4.

17 A. Let's say there's a -- you have a conversion
18 and you deliver, uh, ten acre-feet to it. Then that's ten
19 acre-feet that don't have to be pumped to satisfy ET, so
20 you should get, uh, full benefit for that ten acre-feet no
21 matter how much you pump.

22 Q. Okay. That's the end of your example?

23 A. That's the end of my example.

24 Q. All right. So back to Mr. Dreher's question.

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1 MR. FEREDAY: Just one moment, please.

2 Q. (BY MR. FEREDAY) Dr. Wylie, your modeling,
3 then, involved modeling the surface water delivery to that
4 site. That was the key to your modeling exercise to
5 determine what that converted acre would deliver in terms
6 of aquifer benefit?

7 A. That's correct.

8 Q. Do you know whether the groundwater production
9 on that acre was later deducted from that value?

10 A. It was not.

11 Q. It was not deducted?

12 A. No.

13 Q. So you're saying that the groundwater user got
14 full credit for the full delivery without any netting out
15 of the groundwater pumping that might have occurred?

16 A. That's correct.

17 MR. FEREDAY: Okay. No further questions.

18 MR. DREHER: Mr. Steenson, Mr. Simpson, would
19 you like to Recross?

20 MR. STEENSON: No.

21 MR. DREHER: Mr. Simpson, would you like to
22 Recross?

23 MR. SIMPSON: Well, Mr. Director, it's just
24 that this conversation about whether groundwater --
25 groundwater acres -- or groundwater wells pumping on

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1 If there was groundwater pumping occurring on a conversion
2 parcel, was that groundwater pumping considered with
3 respect to the amount of mitigation provided for that
4 parcel?

5 A. No.

6 Q. And that was based upon the policy that the
7 Department developed in analyzing the mitigation plan?

8 A. That's because any water that gets delivered
9 to a conversion is water that doesn't have to be pumped, so
10 there's a direct benefit to the aquifer.

11 Q. So the total amount of water delivered to that
12 conversion of the parcel could be credited?

13 A. That's right.

14 Q. Irrespective of whether it's beyond the four
15 acre-feet (inaudible)?

16 A. As it turned out, that wasn't the case for
17 this analysis. But because -- if it was more than four
18 acre-feet then it was dispersed.

19 MR. SIMPSON: No more questions.

20 MR. FEREDAY: Mr. Director, if I may just ask
21 another follow-up question of Mr. Wylie?

22 MR. DREHER: Certainly.

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1 REDIRECT EXAMINATION

2 BY MR. FEREDAY:

3 Q. Mr. Wylie, could you refer to Exhibit 2,
4 please, which is Ms. Yenter's January 13th, 2006
5 memorandum. I recognize that there is some -- on Page 2 at
6 the top I recognize that there's some confusion about your
7 answers in the most recent colloquys.

8 At the top of Page 2 maybe we have something
9 that might help shed light on this. I hope so. Perhaps it
10 will make it more confusing.

11 But it says there that acres formally
12 irrigated with a mix of ground and surface water were given
13 credit at a rate of 30 percent of total acres in order to
14 limit replacement credits to the average actual historical
15 depletion of groundwater.

16 Could you describe to me whether that sheds
17 any light on this question we have just been discussing?

18 A. This is about the initial -- this is about the
19 initial groundwater model runs for IGWA's proposal. And,
20 um, what I was talking about was what we could call a
21 "postaudit" where we actually had water delivered. We
22 could actually use water delivered. We didn't have to
23 guess how much water was going to be delivered.

24 In the initial runs we didn't know how much
25 water was going to be delivered, so we took a guess. And

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1 "With the combined volume of surface water
2 shown by Northside Canal Company's records that have been
3 delivered to conversion acres and groundwater diverted by
4 conversion (inaudible) exceeded 4.0 acre-feet per acre, the
5 Department assumed all the groundwater diverted was used
6 for irrigation on the conversion of (inaudible). The
7 volume per acre of groundwater diverted was subtracted from
8 the 4.0 acre-feet per acre, and the Department assumed that
9 any remainder of surface water delivered by the Northside
10 Canal Company (inaudible) into the ground and boundaries of
11 the Northside Canal Company."

12 A. Yeah.

13 Q. Okay. Is that consistent with the testimony
14 you've given?

15 A. Yes. That if it got over a water duty of
16 four, then the surface water delivered above water duty of
17 four acre-feet was dispersed over the surface-water
18 irrigated areas within the Northside Canal Company.

19 Q. "And the volume per acre of groundwater
20 diverted was subtracted then from the 4.0 acre-feet per
21 acre" -- (inaudible). "And the volume per of groundwater
22 diverted was subtracted from 4.0 acre-feet per acre and the
23 Department's (inaudible) remainder of the percolating
24 method."

25 A. What we did was, if it was over four, then we

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1 that guess was based on the value that best calibrated the
2 Model for mixed source lands.

3 Q. That was the 30 percent value?

4 A. That was the 30 percent value.

5 Q. So when Ms. Yenter is saying here that these
6 mixed acres were given a credit to the tune of 30 percent,
7 she means that at the initial look they were given that,
8 but later they might have been given more or less than that
9 depending on some other --

10 A. On --

11 Q. -- calculation?

12 A. -- what was actually delivered to the field,
13 yes.

14 MR. FEREDAY: Okay. No further questions.

15 MR. DREHER: Mr. Steenson.

17 RECROSS-EXAMINATION

18 BY MR. STEENSON:

19 Q. I'll follow up with one. I'm just trying to
20 (inaudible), Dr. Wylie. And I'll read to you from the
21 April 29th Order of the Director approving the 2005
22 substitute curtailments. Under the heading of Page 4
23 "Delivery of Surface Water and Groundwater Diversion
24 from" -- "With the combined volume of surface water
25 shown" -- and this is paragraph (inaudible).

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1 knew that, uh, beyond a shadow of a doubt the groundwater
2 pump was put on the intended field. So that went on the
3 intended field. Then whatever it took to get up to four
4 from surface water, we put on the field, and the, uh,
5 excess above that was dispersed.

6 MR. DREHER: Mr. Steenson, let me try to
7 simplify this a little bit, since I maybe made it a little
8 more complicated.

9 Essentially, the groundwater districts were
10 given credit for all the surface water that was delivered.
11 And that surface water either went to ET or went to
12 recharge; one or the other. But they got credit for all of
13 it; all that was delivered. And there was no -- the
14 subtraction that's referred to in finding 12 is just
15 another way of saying the same thing, that if groundwater
16 was used on those acres then that resulted in more surface
17 water being available for recharge. Because the surface
18 water either went to ET to meet the four, or recharge; one
19 or the other. And there was no subtraction of groundwater
20 diverted from the amount of surface water that was
21 delivered:

23 VOIR DIRE EXAMINATION

24 BY MR. DREHER:

25 Q. Now, that's my understanding of it, and I have

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<p>1 to now ask, Dr. Wylie, is that a correct representation of</p> <p>2 what we did?</p> <p>3 A. That's correct.</p> <p>4 MR. SIMPSON: Mr. Director, if I may?</p> <p>5 MR. DREHER: Mr. Simpson.</p> <p>6</p> <p>7 CROSS-EXAMINATION</p> <p>8 BY MR. SIMPSON:</p> <p>9 Q. Dr. Wylie, if there was groundwater pumped at</p> <p>10 that location it may mean that some of that surface water</p> <p>11 went towards recharge, as opposed to being utilized on that</p> <p>12 parcel. The net result was that more surface water is</p> <p>13 recharged because groundwater pumping occurred at that</p> <p>14 parcel; is that correct?</p> <p>15 A. Yeah. I think so, if I understand you.</p> <p>16 MR. SIMPSON: Okay.</p> <p>17</p> <p>18</p> <p>19 VOIR DIRE EXAMINATION</p> <p>20 BY MR. DREHER:</p> <p>21 Q. But, Dr. Wylie, only to the extent that it</p> <p>22 exceeded four acre-feet per acre, right? If groundwater --</p> <p>23 if one acre-foot per acre of groundwater was pumped at a</p> <p>24 particular location and only three acre-feet of surface</p> <p>25 water per acre was delivered to that location, there was no</p> <p>Page 141</p> <p>ACCURATE COURT REPORTING, INC.</p> <p>(208) 938-0213 FAX (208) 938-1843</p>	<p>1 page --</p> <p>2 A. Okay.</p> <p>3 Q. -- if you will, and this is for 75 acres?</p> <p>4 A. Uh-huh -- yes.</p> <p>5 Q. Okay. So if you work your way over on the</p> <p>6 spreadsheet you can identify how many acre-feet were</p> <p>7 delivered through surface water to him?</p> <p>8 A. Yes.</p> <p>9 Q. That number is?</p> <p>10 A. 363 acre-feet delivered.</p> <p>11 Q. Okay. So that would have exceeded the four</p> <p>12 acre-feet per acre allowance, if you will, for that parcel,</p> <p>13 right?</p> <p>14 A. Yes. That comes up to 4.84 of water duty.</p> <p>15 Q. So does this also identify that there was</p> <p>16 groundwater delivered to that parcel?</p> <p>17 A. Yes. Estimated groundwater delivered is,</p> <p>18 uh, 85.</p> <p>19 Q. Okay. And does it also, then, in the second</p> <p>20 to the last column, identify the surface water delivery?</p> <p>21 And what's the title?</p> <p>22 A. "Surface Water Delivery Credit In Acre Feet."</p> <p>23 Q. And that is how much?</p> <p>24 A. 215 acre-feet.</p> <p>25 Q. Okay. So with respect to the surface water</p> <p>Page 143</p> <p>ACCURATE COURT REPORTING, INC.</p> <p>(208) 938-0213 FAX (208) 938-1843</p>
<p>1 water for recharge?</p> <p>2 A. Yeah. Perhaps we can work through a few</p> <p>3 examples.</p> <p>4 MR. SIMPSON: Dr. Wylie, can we just use the</p> <p>5 spreadsheet that the Department created for one of the</p> <p>6 groundwater users whose language it utilized for</p> <p>7 conversion? Then we have actual numbers that I think --</p> <p>8 don't think that we're that far off --</p> <p>9 THE WITNESS: Okay.</p> <p>10 MR. SIMPSON: -- but I want to use it just for</p> <p>11 clarification. Your eyes are obviously better than mine so</p> <p>12 you'll be able to read this.</p> <p>13 MR. DREHER: Mr. Simpson, is that an exhibit</p> <p>14 that you're referring to?</p> <p>15 MR. SIMPSON: Well, Mr. Director, it's part of</p> <p>16 a spreadsheet that was e-mailed out to all the participants</p> <p>17 that we received.</p> <p>18 (Discussion off the record.)</p> <p>19</p> <p>20 RECROSS-EXAMINATION</p> <p>21 BY MR. SIMPSON:</p> <p>22 Q. On top of this sheet, Dr. Wylie, it says "IDWR</p> <p>23 Conversion Spreadsheet." And I'll reference to you,</p> <p>24 Dr. Wylie, it's for -- I'll just use the example of</p> <p>25 Jack Heywright (phonetic) at the bottom of the second</p> <p>Page 142</p> <p>ACCURATE COURT REPORTING, INC.</p> <p>(208) 938-0213 FAX (208) 938-1843</p>	<p>1 delivery credit allowed for that 75 acre parcel it was 215</p> <p>2 acre-feet?</p> <p>3 A. That's correct.</p> <p>4 Q. And the balance of that -- that is the</p> <p>5 difference between 215 and 363 would have been recharge</p> <p>6 spread over the system?</p> <p>7 A. That would have been dispersed, that's right.</p> <p>8 MR. SIMPSON: All right.</p> <p>9 MR. DREHER: Mr. Simpson, for the sake of the</p> <p>10 record, will you attempt to describe what that document is</p> <p>11 that you have been using as this example.</p> <p>12 MR. SIMPSON: Well, I will allow Mr. Fereday</p> <p>13 to do that or, conversely, to introduce this, if you would</p> <p>14 like to.</p> <p>15 MR. FEREDAY: Yes. This is a spreadsheet that</p> <p>16 was provided to us from the Department. I think it was</p> <p>17 provided to all the parties. It's a large spreadsheet that</p> <p>18 came across as very difficult to read because it's small</p> <p>19 print. We have blown it up a little bit and we have</p> <p>20 written on the top "IDWR Conversion Spreadsheet." There</p> <p>21 was a similar one that was done for the reduction acres, so</p> <p>22 that's what it was.</p> <p>23 MR. DREHER: Mr. Fereday, do you wish to</p> <p>24 introduce that as an exhibit?</p> <p>25 MR. FEREDAY: Yes. I believe I will, given</p> <p>Page 144</p> <p>ACCURATE COURT REPORTING, INC.</p> <p>(208) 938-0213 FAX (208) 938-1843</p>

1 the fact that it has been discussed. So we'll introduce
2 that as Exhibit 9.
3 MR. DREHER: Mr. Steenson, Mr. Simpson, I
4 assume there's no objection to this?
5 MR. STEENSON: No.
6 MR. SIMPSON: No objection.
7 MR. DREHER: And we'll admit Exhibit 9
8 together with the previous eight exhibits that have already
9 been admitted.
10 (Exhibit No. 9 was admitted
11 into evidence.)
12 MR. DREHER: Dr. Wylie, I think we're done.
13 You're excused.
14 Mr. Fereday.
15 MR. FEREDAY: Mr. Director, at this time I
16 would like your indulgence in allowing Brad Sneed to
17 examine the next two witnesses from the groundwater
18 districts.
19 MR. DREHER: Certainly.
20 Mr. Sneed.
21 MR. SNEED: Mr. Director, I will now ask that
22 Mr. Rex Minchey take the stand as IGWA's next witness.
23 MR. DREHER: Mr. Minchey, will you raise your
24 right hand, please.
25

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1 other members of the district?
2 A. Somewhat, yes.
3 Q. Could you tell us how you interact with those
4 members, generally?
5 A. Uh, by answering, uh, phone calls, interacting
6 with them at meetings with questions, and talking with them
7 about their concerns and -- and, uh, stuff in the areas
8 concerning water.
9 Q. How often do you have meetings for your
10 membership?
11 A. Uh, for the total membership we have an annual
12 meeting, uh, plus an annual budget meeting, and we have had
13 two or three emergency or, uh, other meetings.
14 Q. Do you have open meetings periodically,
15 though, for the members to attend if they wish?
16 A. We have, uh, monthly board meetings that
17 anyone can attend.
18 Q. Do you know approximately how many members
19 belong to the North Snake Groundwater District?
20 A. There is approximately 400 to 410.
21 Q. And do you know how many acres are
22 collectively held by the members within the North Snake
23 Groundwater District?
24 A. To the best of my recollection, it's around
25 105- to 110,000.

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1 JOHN REX MINCHEY,
2 having been duly affirmed under oath testified
3 as follows:
4 MR. DREHER: Thank you. You may be seated.
5 And please begin by stating your name and address for the
6 record.
7 MR. MINCHEY: My name is John Rex Minchey,
8 245 Ranchview Road East, Jerome, Idaho.
9
10 DIRECT EXAMINATION
11 BY MR. SNEED:
12 Q. Good afternoon, Mr. Minchey.
13 What do you do for a living?
14 A. I'm maintenance manager of Jerome Cheese.
15 Q. Are you involved at all with the North Snake
16 Groundwater District?
17 A. Yes.
18 Q. Could you tell us how you're involved with the
19 North Snake Groundwater District?
20 A. Well, in one aspect I'm a representative for
21 Jerome Cheese as a member of the North Snake Groundwater
22 District, as well as Unit 3 water users. And the other
23 aspect I'm on the Board of Directors.
24 Q. As a member of the Board of Directors for the
25 North Snake Groundwater District do you interact with the

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1 Q. Do you recall last spring and early summer
2 when the Department issued its two delivery call Orders
3 with respect to the Blue Lakes delivery call and the
4 Clear Springs delivery call?
5 A. Yes, sir.
6 Q. And did there come a time when you discussed
7 those Orders with members of your groundwater district?
8 A. Yes, sir.
9 Q. And what was their general reaction to those
10 two Orders?
11 A. Well, their general reaction was, uh, how can
12 this be, but we'll, uh -- we'll do what we have to do to
13 mitigate so that we can continue to farm.
14 Q. And what specifically did those two Orders
15 require your members to do last year in order to avoid
16 involuntary curtailments?
17 A. Uh, voluntary curtailment.
18 Q. Anything else?
19 A. Uh, continuing with the, uh, conversions and,
20 uh, basically that's it.
21 Q. Did the Orders alter the total acres that your
22 members were allowed to farm last year?
23 A. Not to my recollection.
24 Q. Did the Orders require that -- or was it a
25 result of those Orders that some of your members converted

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1 groundwater irrigated acres to surface water irrigated
2 acres last year?

3 A. I believe that helped to facilitate some of
4 the additional conversions that happened in 2005. The
5 largest thing that the Orders did is facilitate a voluntary
6 curtailment of around 8,000 some acres, I believe.

7 Q. With respect to the conversion water last
8 year, who sold that water to North Snake Groundwater
9 District?

10 A. It was a, uh -- different places. Water was
11 rented from Bell Rapids. From, uh -- surface water users
12 up in the, uh, 110, 120 Water District area, uh, rented
13 some water, I believe, from Pocatello. Different places
14 like that we worked with Idaho Groundwater Appropriators
15 for that water.

16 Q. Do you know how many total acre-feet your
17 members purchased last year in surface water for their
18 conversion projects?

19 A. It seems to me like it was in excess of
20 80,000, but for just the conversions --

21 Q. Yes, just last year's conversions.

22 A. For just the conversions and the
23 Sandy Pipeline was 40 thousand plus.

24 Q. Do you recall roughly how much you paid or
25 your members paid per acre-foot for that replacement water?

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1 Q. And I think you said earlier that there was,
2 roughly, 40,000 acre-feet that were diverted for conversion
3 projects and the Sandy Pipeline; is that correct?

4 A. That's correct.

5 Q. And do you remember what proportion of that
6 was diverted for the conversion projects and not the
7 Sandy Pipeline, roughly?

8 A. There was, uh, about 10,000 delivered -- uh,
9 diverted -- probably 15,000 -- 13,000 diverted for the
10 Sandy Pipeline, considering the losses and all. And there
11 was -- the balance of that was delivered -- was diverted
12 for the conversions.

13 Q. Okay. So, roughly, 26- to 27,000?

14 A. 27 something -- 28,000.

15 Q. And so out of that 26- or 27,000, you said
16 roughly about 20,000 was delivered to --

17 A. Our accounting was about 20,400 and some, I
18 believe, actual delivery.

19 Q. Do you have an idea what happened to the
20 difference; the 6,000 or so difference between the two
21 numbers?

22 A. Um, yeah. We're charged a 30 percent, uh,
23 seepage fee on any water that's put in the canal -- all
24 farmers are. All irrigators are charged a 30 percent loss
25 fee. When it's diverted from Milner to wherever you

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1 just for the general range?

2 A. To the best of my knowledge -- and we didn't
3 pay the same amount per acre so it varied somewhere between
4 8, and 10 and 11 an acre-foot.

5 Q. How was the surface water delivered to your
6 members conversion projects last year?

7 A. Northside Canal Company canals.

8 Q. Did you have a contract with them to do that
9 or was it --

10 A. We have an agreement, yes.

11 Q. Was it a handshake agreement or a written
12 agreement?

13 A. Well, it's more in writing, because, uh, they
14 require us to request that they deliver our water, and they
15 request from the Department the approval of the Department
16 to deliver the water, so it's all writing.

17 Q. And how much did Northside Canal Company
18 charge the Water District for delivery of that surface
19 water to conversion projects?

20 A. That's called a "willing fee" and that's three
21 dollars per acre-foot.

22 Q. Do you know how many acre-feet of surface
23 water were actually delivered by Northside Canal Company to
24 the conversion projects in your district?

25 A. There was somewhere close to 2,500.

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1 divert, you lose 30 percent.

2 Q. Is that pretty standard?

3 A. That's standard as far as everything I know.

4 Q. Do you know whether the Department gave
5 Northside Groundwater District, through the North Snake
6 Groundwater District, any mitigation credit for those
7 losses in the canal?

8 A. Not in anything I have been able to tell in
9 the documentation.

10 Q. And when did you first discover that they were
11 not giving any credit for those losses?

12 A. Sometime between May 12th and May 16th, when
13 we received the, uh, compiled data from the Department
14 telling us what the conversions and the, uh, idled acres
15 had contributed to the mitigation plan. On the 16th we
16 discussed that in a Board meeting at length.

17 Q. And that's May 16th of this year?

18 A. May 16th, 2005.

19 Q. 2006?

20 A. '06. Thank you. I'm not nervous.

21 Q. And when you said we discussed this at length,
22 was that the Board members discussed it or --

23 A. The members of the North Snake Groundwater
24 District Board, yes.

25 Q. Were there any of the members present at that

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1 meeting?

2 A. Yes, there was.

3 Q. And do you recall how some of them may have
4 reacted to that information that the Department was not
5 going to give credit for those seepage losses?

6 A. Well, I don't understand why that wouldn't be.
7 They're going into what's believed direct recharge. And --
8 and that's going directly into the aquifer. I mean, that's
9 the whole thing here is building up the aquifer.

10 Why wouldn't we get credit for it? We paid
11 for it, paid dearly for it, and got zero credit for it as
12 far as we knew. It was -- it was very -- very -- I
13 wouldn't say contentious among the group, but very
14 contentious toward the decision.

15 Q. Last year did your members or any of your
16 members convert any acres to surface irrigation which
17 received no mitigation credit, because they weren't in a
18 formal conversion project submitted to the Department?

19 A. Personally, I only know that I have been told
20 there was some -- some independent conversions, and those
21 were not handled by North Snake Groundwater District as
22 conversion projects. More so they was handled by the
23 independent farmer and -- who had availability to either
24 rent water or had water from other places that he would
25 move from Northside Canal Company and dry up his well.

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1 was having problems with these measuring devices?

2 A. Yes, she did. And she sent letters out and,
3 uh, in particular, uh, we had to install hour meters on two
4 of our wells, in particular at Jerome Cheese, because, uh,
5 of the conversion projects and not being able to use the
6 PCCs, because of booster pumps and stuff.

7 Q. So after Ms. Yenter told you about these
8 issues and you put -- did you say flowmeters?

9 A. Hour meters.

10 Q. Hour meters on these wells, to your knowledge,
11 did Ms. Yenter or the Department revisit those locations to
12 try to make an assessment of whether credit could be given?

13 A. I don't know that our site was revisited at
14 all, no. I don't remember -- I know I submitted a letter
15 to North Snake Groundwater District that, uh, we would, in
16 fact, do what she requested.

17 Q. Do you know, roughly, what time of year you
18 did that?

19 A. That was after the first of July sometime.

20 Q. Okay. Now, moving on to the voluntary
21 curtailments last year, do you know approximately how many
22 acres your members voluntarily curtailed in 2005, in an
23 effort to provide water to Blue Lakes and Clear Springs?

24 A. Well, I do know that there was some 8,000 plus
25 acres of Northside Canal -- or North Snake Groundwater

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1 They weren't very well documented, uh, or they would have
2 been in the, uh -- in the, uh, conversion, uh, information
3 we submitted.

4 Q. Do you know if any of your members
5 accidentally submitted acres as voluntary curtailments,
6 when, in fact, they should have been submitted as
7 conversions?

8 A. I believe that, uh, through the records, uh,
9 that there was some case of that -- limited; very, very,
10 very limited, though.

11 Q. To your knowledge, did anyone at the
12 Department contact any of the members of the North Snake
13 Groundwater District to inform them of these potential
14 problems with the data that they submitted?

15 A. Not to my knowledge.

16 Q. Moving on to the voluntary curtailments -- or,
17 excuse me, I'm going to ask a couple other things about
18 the, uh, conversion projects.

19 Did you hear Ms. Yenter testify earlier this
20 morning that she had some difficulties trying to assess
21 credit for certain acres in the district because they had
22 inaccurate measurement devices?

23 A. Yes.

24 Q. And did Ms. Yenter ever tell you that she
25 was -- or any of the groundwater district members, that she

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1 District acres that we submitted to the district as -- to
2 the Department as curtailed acres.

3 Q. And do you know how many of those acres --
4 roughly, 8,000 acres were accepted by the Department as
5 voluntary curtailment mitigation?

6 A. A ridiculous 25 percent.

7 Q. Why do you say "ridiculous"?

8 A. Because, very personally, I worked with
9 "Angie" Leavitt side by side putting those together -- the
10 information that we got from the farmers -- checking water
11 rights, checking maps -- checking these and putting them
12 all together. And to only get 25 percent credit on the
13 work that what did, that -- we must be really off base on
14 checking everything out. Now, there were some mistakes
15 made, but for the whole of it, I think that Angie put a
16 very complete package together and a lot more of that
17 acreage should have been accepted.

18 Q. When did you first discover that the
19 Department was not going to give credit for roughly 75
20 percent of those?

21 A. Well, it was brought to my attention on about
22 the 13th of May when Angie brought me to my work a printout
23 and says "Help me. We only got credit for 25 percent of
24 everything we did. What can we do?"

25 Q. And did you take that information to the

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1 members?

2 A. That information -- uh, we had a meeting -- a
3 Board meeting on the 16th, discussed it in depth and, uh,
4 then there was a meeting called -- a special meeting called
5 within a week or two of that. I can't remember the exact
6 date of that meeting.

7 Q. Do you recall how any of your members reacted
8 to that news?

9 A. Well, I know how some of the members reacted
10 during the Board meeting that we had. Some of them says
11 "Well, if this is the way we're going to be treated, we
12 won't dry up another acre for this because we don't get
13 credit for it." Others said "What do we do? We don't know
14 what to do? If we do everything we're asked, we don't get
15 credit. Why should we dry up?"

16 Q. Did you hear questioning testimony earlier
17 today regarding the unusually wet spring last year?

18 A. Yes.

19 Q. And are you aware yourself of any instances
20 within the North Snake Groundwater District where a crop
21 might have fully matured on voluntarily curtailed acres
22 without any artificial irrigation?

23 A. Yes.

24 Q. And did you hear Ms. Yenter's testimony
25 earlier this morning that she tried to assess those

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1 Q. And did you, at some point, inform your
2 membership that they were not going to receive credit for
3 those acres they dried up last year if they were dry in
4 2004, as well?

5 A. I believe that information was given in the,
6 uh, meeting after the 16th of May.

7 Q. And do you recall how some of your members
8 reacted to that news?

9 A. I could only speak by hearsay. I wasn't at
10 that meeting.

11 Q. Okay. Do you recall hearing after the fact
12 how some of the people reacted?

13 A. Not very happy. In -- in -- in an instance
14 where I sat in a meeting on the CREP, uh, it was -- it was
15 very plain that there was people who had not irrigated 2004
16 and 2005, for the purpose of mitigation. And if they
17 didn't irrigate 2004, 2005, CREP wouldn't be available to
18 them. And that upset some of the members visibly in the
19 meeting. And the advice there from FSA was "You better get
20 some land wet. You better get pumping on it this year."

21 Q. So if your members had known or had realized
22 last spring that they would receive no credit for drying up
23 acres in 2005, if those same acres were dry in 2004, do you
24 think some of them would have potentially irrigated those
25 acres last year?

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1 situations and had some difficulties doing that?

2 A. Yes.

3 Q. To your knowledge, did Ms. Yenter contact any
4 of your members where those situations might have arose to
5 try and gather some additional information about whether
6 those acres had been artificially irrigated?

7 A. Not to my knowledge.

8 Q. Did your members -- generally, did any of them
9 voluntarily curtail acres in 2004?

10 A. Yes.

11 Q. What about in 2003?

12 A. I believe so. I'm not positive on that. I
13 believe they did.

14 Q. And did you hear testimony earlier this
15 morning, uh, about the Department not getting credit for
16 acres that were dry in 2005, if they were also dry in 2004?

17 A. Yes, I did.

18 Q. And at the time that your members and yourself
19 left acres dry last year in 2005, or determined that's what
20 you were going to do, did you believe that these acres
21 would receive curtailment credit even if they had not been
22 irrigated in 2004?

23 A. It was -- it was my understanding that any
24 acres that was part of a mitigation plan that was dried up
25 would receive credit.

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1 A. Absolutely.

2 Q. So now that your members are aware that the
3 Department is likely not going to give credit for acres
4 that have been left dry for consecutive years or the years
5 prior to a mitigation plan being filed, do you think some
6 of those members will begin irrigating those acres again
7 with groundwater?

8 A. Yes.

9 Q. Did you hear Ms. Yenter's testimony earlier
10 today with respect to endguns?

11 A. Yes.

12 Q. And did you hear her testify -- and I'm
13 summarizing here -- that, in her opinion, turning off the
14 endguns does not cause any less water to be diverted from
15 the pump?

16 A. I heard that.

17 Q. And do you agree with that testimony?

18 A. Not entirely.

19 Q. And can you tell me why you do not agree with
20 that entirely?

21 A. Well, in -- in -- in the, uh, fact of our
22 pivots at Jerome Cheese, which I'm very familiar with, uh,
23 some of the packages on them that we have put on allow a
24 certain GPL. And, uh, when the pivots on -- when the
25 endguns are on or off, they don't change. So the net water

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1 going out of the pivot changes. It decreases when the
2 endgun is off. That means there's less water put out, I
3 mean.

4 MR. SNEED: Thank you, Mr. Minchey. That's
5 all the questions I have for right now.

6 THE WITNESS: Okay.

7 MR. DREHER: Mr. Steenson.

8
9 CROSS-EXAMINATION

10 BY MR. STEENSON:

11 Q. Mr. Minchey, you are a representative of the
12 North Snake Groundwater District, correct?

13 A. Yes, sir.

14 Q. And not, in any respect, a representative of
15 the Magic Valley Groundwater District?

16 A. That is correct.

17 Q. So when you talk about 25 percent of the acres
18 being recognized, you're referencing 2,144 acres recognized
19 of approximately 8,500 submitted acres, correct?

20 A. I'm speaking of the North Snake Groundwater
21 District submitted acres.

22 Q. And you have been asked a number of questions
23 and given a number of answers about your members
24 understanding -- their reactions -- your members, I take it
25 that you understand that their groundwater rights are

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1 which there's a sentence that says "Both districts are in
2 question to written notices that all district members
3 reduce their groundwater-irrigated acres by 10 percent as
4 compared to their 2004 irrigated acres to provide
5 documentation."

6 Doesn't that say that plans are submitted
7 proposes as an alternative for involuntary curtailment,
8 voluntary curtailment of acres that were actually irrigated
9 in 2004?

10 A. The -- yes. With the caveat that once acreage
11 is put into mitigation it's -- it's accounted for, it's
12 credited.

13 Q. And how many of the 6,000-some acres are you
14 contending were -- should have gotten credit for, and that
15 you didn't, because they were in mitigation plans in 2004?

16 A. I don't remember the exact number of acres.
17 Um, if I could look at the, um, sheet that explains the
18 detail, I could tell you. Is it an exhibit?

19 MR. SNEED: Look at Exhibit 1, Mr. Minchey.
20 It's Attachment A.

21 THE WITNESS: It would be, uh, item No. 5 --
22 eligibility code No. 5, where there was, uh, 1,010 acres
23 submitted that was not given any credit.

24 Q. (BY MR. STEENSON) There were in mitigation
25 plans, then, in 2004; is that correct?

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1 hydrologically connected to the Thousand Springs
2 (inaudible), correct?

3 A. I would believe that's a common knowledge.

4 Q. And I take it your members are aware that my
5 clients, Blue Lakes Trout Farms, and others I represent,
6 have water rights to those springs below Milner?

7 A. Yes.

8 Q. And you're aware that a number of those
9 springs are substantially short in their delivery to the
10 water (inaudible)?

11 A. That's what the Orders tell us.

12 Q. Now, in the questions you were asked about
13 your members' motivation in terms of they understood they
14 wouldn't get credit if they wouldn't dry up acres -- if I
15 could ask this: Do your members understand and believe
16 that if they don't perform mitigation they will be in
17 voluntary curtailment -- or at least in some groundwater
18 (inaudible)?

19 A. That's, uh -- that's the word that we try and
20 encourage them to understand, yes.

21 Q. Now, with respect to 2004 use or nonuse I've
22 asked previous witnesses -- and I'll ask you as well --
23 about this portion of the groundwater users plan for
24 providing replacement water. And you've probably heard me
25 ask these questions. And this is at Page 5 of that plan in

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1 A. I do not know that all 1,010 was in mitigation
2 plans, but there was acreage in that that was in mitigation
3 plans, to my knowledge.

4 Q. Have you, or someone else with the Northside
5 Canal Company, tabulated the number of acres that were in
6 mitigation plan in 2004, that you believe should have
7 received -- should have been eligible?

8 A. We -- we have started to look at that, but we
9 just got the information the, uh, 13th -- the 12th of May,
10 and it takes a little while to decipher all of it.

11 Q. So I take it that that information verifying
12 the acreage from 2004, not irrigated during that year in
13 the data mitigation plan, that wasn't clear from your prior
14 submission to the Department?

15 A. To my knowledge, I -- I don't know for sure
16 whether it was clear or not; not by what I did. But it
17 could have been clarified by what "Angie" did.

18 Q. And you are going through the process now of
19 developing some kind of information to tabulate or clarify,
20 again, the number of acres in the mitigation plan in 2004
21 and not irrigated that year 2005?

22 A. Our plan is to go through every one of these
23 and see what we can do on every one of them that was turned
24 down -- every acres. Now, whether it's being done right
25 now or not -- we're in the middle of budget, so, uh, we're

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<p>1 having to get budget ready for the share, but the plan is 2 to do that.</p> <p>3 Q. And can you identify for me the source of this 4 eligibility criterium that gave the land that was being 5 irrigated in 2004, again, within a mitigation plan would be 6 eligible; where does that come from?</p> <p>7 A. Well, in my mind it comes from what I've been 8 learning over the last few years, going to all the meetings 9 and -- and everything, that our water rights are protected 10 if they're in a mitigation plan. Any surface -- any 11 groundwater to surface water conversions that lay 12 groundwater idle, those water rights are protected under a 13 mitigation plan.</p> <p>14 Q. They're protected from curtailment; is that 15 right?</p> <p>16 A. They're protected from loss, from forfeiture.</p> <p>17 Q. Okay. They're protected from forfeiture. 18 So how does that relate to whether or not 19 they're eligible for credit in terms of the mitigation plan 20 that you submitted in 2005?</p> <p>21 A. The -- that -- that does not, but that just 22 gave an example of protection. And -- and under the 23 umbrella of protection that if -- if acreage is laid out in 24 mitigation it's protected by mitigation by the rules that 25 go along with that.</p> <p style="text-align: right;">Page 165</p> <p style="text-align: center;">ACCURATE COURT REPORTING, INC. (208) 938-0213 FAX (208) 938-1843</p>	<p>1 MR. SNEED: Just a couple of follow-ups.</p> <p>2</p> <p>3 CROSS-EXAMINATION</p> <p>4 BY MR. SNEED:</p> <p>5 Q. You mentioned a couple times, during my 6 questioning, and during Mr. Steenson's, a woman named 7 "Angie."</p> <p>8 Would you clarify for the record who --</p> <p>9 A. Absolutely. "Angie" Leavitt is the clerk and 10 secretary of North Snake Groundwater District. She's, 11 uh -- uh, kind of the keep-all-together office manager, do 12 everything that none of us Board members have time to do.</p> <p>13 Q. And lastly, if I can ask a question in aid of 14 clarifying Mr. Steenson's question, I believe: To your 15 understanding, acres or wells that were -- wells that were 16 shut off in 2004, or acres that were dry in 2004, do -- by 17 leaving those off the following year, do those 2004 18 curtailments continue to have positive effects on recharge 19 to the aquifer?</p> <p>20 A. That's our feeling, and that's what we have 21 been being told by hydrologists, and that's what 22 commonsense tells me.</p> <p>23 MR. SNEED: Thank you.</p> <p>24 MR. DREHER: Mr. Minchey, for the record, 25 would you give us the proper spelling of your last name.</p> <p style="text-align: right;">Page 167</p> <p style="text-align: center;">ACCURATE COURT REPORTING, INC. (208) 938-0213 FAX (208) 938-1843</p>
<p>1 Q. It's protected from forfeiture, on the one 2 hand, correct?</p> <p>3 A. Okay.</p> <p>4 Q. Or from curtailment, is that what you're 5 saying?</p> <p>6 A. Well, curtailment don't matter. When it's 7 voluntarily curtailed, you're already curtailed.</p> <p>8 Q. Sure. So then it really doesn't protect you 9 from forfeiture?</p> <p>10 A. I -- I guess.</p> <p>11 Q. Mr. Minchey, what does that have to do with 12 what we're talking about here today, which is the idea that 13 those plans should be eligible for credit in this 14 mitigation plan?</p> <p>15 A. I don't know that I can answer that to your 16 satisfaction, but what I will answer is we feel everything 17 we do in mitigation from year to year to year should count. 18 We're doing an awful lot.</p> <p>19 Q. And that's where your understanding comes 20 from?</p> <p>21 A. Yes.</p> <p>22 MR. STEENSON: I have no further questions.</p> <p>23 MR. DREHER: Mr. Simpson.</p> <p>24 MR. SIMPSON: No questions.</p> <p>25 MR. DREHER: Thank you.</p> <p style="text-align: right;">Page 166</p> <p style="text-align: center;">ACCURATE COURT REPORTING, INC. (208) 938-0213 FAX (208) 938-1843</p>	<p>1 THE WITNESS: M-I-N-C-H-E-Y.</p> <p>2 MR. DREHER: Thank you. And I have one 3 question, I guess, in clarification regarding lands that 4 were not irrigated in 2004.</p> <p>5</p> <p>6 VOIR DIRE EXAMINATION</p> <p>7 BY MR. DREHER:</p> <p>8 Q. Reading from paragraph 3 of the Order that I 9 issued on May 19th in the Blue Lakes Trout Farm delivery 10 call matter, the criteria that we applied -- let me start 11 at the beginning of this provision.</p> <p>12 "As an alternative to compliance with 13 provision 2" -- and provision 2 dealt with providing 14 replacement water directly to Blue Lakes Trout.</p> <p>15 "As an alternative to compliance with 16 provision 2 above, the irrigation districts and groundwater 17 districts that hold or represent holders of groundwater 18 rights for consumptive uses having priority dates later 19 than December 28th, 1973, can submit a plan or plans to the 20 Director by 5 p.m. on May 30th, 2005, to forego, curtail, 21 consumptive uses authorized under the effective water 22 rights or other water rights beginning on June 7th, 2005, 23 over a period not more than five years (substitute 24 curtailment) and continuing until further Order of the 25 Director, so long as whole beneficial use was made under</p> <p style="text-align: right;">Page 168</p> <p style="text-align: center;">ACCURATE COURT REPORTING, INC. (208) 938-0213 FAX (208) 938-1843</p>

1 the foregone rights in the prior year, or use under the
2 rights was foregone in the prior year for purposes of
3 mitigation."
4 So that was the requirement. And as far as
5 I'm aware it's not a matter of us not giving credit for
6 lands that were not irrigated in 2004, when those lands
7 were part of a mitigation. But what's happened is -- I
8 would guess the question I'm getting to is: Isn't it true
9 that the reason that we have been unable to recognize
10 credit for lands that were not irrigated in 2004, is
11 because there has been no identification that they were not
12 being irrigated in 2004 as part of a mitigation effort?
13 A. I would suspect that's the biggest problem. I
14 would hope that the Director would, uh, accept some
15 additional information to prove that up.
16 MR. DREHER: Okay. All right. Thank you.
17 You're excused.
18 THE WITNESS: Thank you.
19 MR. DREHER: Mr. Sneed.
20 MR. SNEED: IGWA would like to call its next
21 witness, Dean Stevenson.
22 MR. DREHER: Mr. Stevenson, if you could raise
23 your right hand, please.
24
25

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1 Groundwater District do you interact with the members from
2 time to time?
3 A. Uh, pretty regular.
4 Q. Do you have monthly Board meetings?
5 A. Yes, we do.
6 Q. And are those attended by the members usually?
7 A. Uh, we have a few members show up
8 occasionally, but we have -- we also have other meetings;
9 special meetings.
10 Q. Do you know approximately how many members
11 belong to the Magic Valley Groundwater District?
12 A. Um, yeah. There's been different -- there's,
13 uh, an excess of 250 members in -- in, uh, Water District
14 130 and some also in Basin 45.
15 Q. Do you know how many acres are collectively
16 held by your members?
17 A. About -- around 125,000, including Basin 45.
18 Q. Do you recall last spring and early summer
19 when the Department issued its two delivery call Orders
20 with respect to Blue Lakes and Clear Springs Foods?
21 A. Yes.
22 Q. And did there come a time after those Orders
23 that you had an occasion to speak to your members about
24 those Orders?
25 A. Yes. We've communicated with our membership

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1 DEAN STEVENSON,
2 having been duly affirmed under oath testified
3 as follows:
4
5 MR. DREHER: Thank you. You may be seated.
6 And I'm sorry for your pain.
7 MR. STEVENSON: I've inflicted it on myself.
8 MR. DREHER: Yeah.
9 If you would begin by stating your name and
10 address for the record, please.
11 MR. STEVENSON: My name is Dean Stevenson. My
12 address is 575 West 600 North, Paul, Idaho.
13
14 DIRECT EXAMINATION
15 BY MR. SNEED:
16 Q. Mr. Stevenson, could you tell us what you do
17 for a living?
18 A. Uh, I'm a farmer.
19 Q. And are you involved with the Magic Valley
20 Groundwater District?
21 A. Yes. I'm a Board member of the Magic Valley
22 Groundwater District.
23 Q. And I assume you're also a member?
24 A. Yeah. A member and Board.
25 Q. As a Board member for the Magic Valley

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1 about those Orders.
2 Q. Do you generally recall your members' reaction
3 to those Orders last spring and summer?
4 A. Um, yeah. We had, uh -- our membership had
5 some willingness to go forward and -- uh, by some of the
6 membership to go forward and, uh, do the alternative
7 curtailment. And also the purchase of the water that
8 was, uh -- did -- was also a big part of it. We have
9 brought up high-lift pumpers from some water users in
10 eastern Idaho and put into the conversion projects.
11 Q. So did the Orders last year result in -- the
12 Director's Orders result in some of your district members
13 curtailing groundwater use in some of their acres?
14 A. Yes.
15 Q. Do you know approximately how many acres your
16 membership curtailed last year?
17 A. There was, uh -- between Basin 45 -- and
18 that's part of our district on the east side of the Snake
19 River and Water District 130 there was about a hundred --
20 or about 12,000 -- a little over 12,000 acres submitted.
21 Q. And do you recall how many of those acres were
22 accepted by the Department as mitigation (inaudible)?
23 A. Uh, it was 30 some percent. I think
24 38 percent.
25 Is that the right number? I think that's the

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1 correct number. It's in one of these exhibits, I think.
2 **Q. Hold on a second. I'm going to take a look at**
3 **the exhibit to verify that.**
4 **So when you discovered that the Department was**
5 **going to give you credit for, roughly, 38 percent of those**
6 **acres, did you convey that information to your members?**
7 A. Some of that's been conveyed to the membership
8 that all of it was not -- all of the curtailment was not
9 accepted.
10 **Q. And how did you go about telling your members**
11 **about that?**
12 A. Well, we've -- because we had been going
13 through trying to determine each one, we announced it at
14 one of our meetings that we didn't have all of the
15 curtailment from the previous year accepted.
16 **Q. And how did your members react to that news?**
17 A. Well, not real well, but -- but they, you
18 know -- but we told them we were going to try to look into
19 it farther and try to work to getting it more accepted.
20 **Q. Did you hear questioning in testimony earlier**
21 **today, and just a few minutes ago with Mr. Minchey,**
22 **regarding the unusually wet spring last year?**
23 A. Yeah. It was exceptionally wet.
24 **Q. Are you aware of any instances within the**
25 **Magic Valley Groundwater District where a crop might have**

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1 just to my knowledge there -- but that's not to say that
2 she didn't with the individual members.
3 **Q. Did any of your members voluntarily curtail**
4 **acres in 2004?**
5 A. Yes.
6 **Q. And what about in 2003 or 2002?**
7 A. Yes. Starting in 2002 and 2003, we were under
8 the stipulated agreement, which was a two-year agreement,
9 and at that time we had to cut power consumption -- well,
10 we had to cut water use and it was tied -- we either had
11 to find the replacement water, which we were not able to
12 find, and then we -- so we had to cut water usage, which
13 was tied to power consumption. And quite a few folks, uh,
14 turned off some, you know, pivot corners and a few things
15 like that to decrease their power consumption.
16 **Q. And did you hear testimony earlier today and**
17 **from the Department witnesses this morning about the**
18 **Department's decision to not give credit for any acres that**
19 **were left dry in 2005, if they were also left dry in 2004?**
20 A. Yes.
21 **Q. And at the time that your members made that**
22 **decision last year to keep those acres dry in 2004, did you**
23 **believe that they were going to receive credit --**
24 A. We -- we were -- as to what the Director had
25 read, we were under the assumption if they had laid out in

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1 **fully matured on voluntarily curtailed acres without any**
2 **artificial irrigation?**
3 A. Yes. Because most of that -- a lot of the
4 acres were planted before an Order came out, so there was
5 some acres that came out fairly well with the --
6 **Q. I think those Orders came out in mid-May --**
7 A. Right.
8 **Q. -- and June. So the crop was already in the**
9 **ground?**
10 A. Right. And -- and with an exceptional wet
11 period there's . . .
12 **Q. Did you hear Ms. Yenter's testimony earlier**
13 **today that she had some difficulty assessing some of those**
14 **situations --**
15 A. Yes.
16 **Q. -- because it was a wet spring?**
17 A. Yeah. And that -- yeah, I can have -- I can
18 see where that would be difficult.
19 **Q. To your knowledge, did Ms. Yenter ever contact**
20 **any of your members when these situations arose on their**
21 **ground to maybe try and gather some additional information**
22 **about whether those acres had been artificially irrigated**
23 **or not?**
24 A. Um, to my knowledge she hadn't -- I know she
25 did -- I know there was some on-the-ground inspections, but

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1 the -- for their mitigation in, uh, 2004, which was the
2 year we had our agreement -- let's see. 2002, 2003, was
3 the stipulated agreement. Then we had had agreement from
4 the Hall of Mirrors from 2004, during those years. And so
5 we -- you know, we assumed that's what we had been doing
6 during that time.
7 **Q. So your assumption, then, or your**
8 **understanding was, then, uh -- um, in accordance with the**
9 **language that the Director --**
10 A. Right.
11 **Q. -- read a few minutes ago?**
12 A. Right. Except that for the 2002, 2003 -- see,
13 those weren't tracked by acres. They came back to the --
14 they came back to the power usage on those years.
15 **Q. And what was your understanding of those acres**
16 **with respect to mitigation in 2005?**
17 A. Well, we understood that if you laid the acres
18 out to save -- because when you lay the acres out you're
19 not lifting the water -- you know, you're not doing that.
20 And that's how we achieved our -- that's how we achieved
21 our -- our, uh, reduction in pumping.
22 **Q. Just to clarify, when you say "laid the acres**
23 **out," you're referring to not irrigating?**
24 A. Right.
25 **Q. As a Board member for the Magic Valley**

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1 Groundwater District, did you have occasion to tell your
2 members that they were not going to receive credit for --
3 or did not receive credit for certain acres that they laid
4 out in 2005, which were also dry in 2004?

5 A. We -- we have not -- that hasn't been
6 communicated to all the members yet, because of the -- the
7 time we have been working at it. But that's an issue that
8 if -- if, uh, the membership knows they're not getting
9 credit in '05, and there's not credit on it until they get
10 them wet, then . . .

11 Q. So with respect to the members you have
12 spoken with or the Board has spoken with, what has been
13 their reaction to that information?

14 A. Well, some of the folks say if we're not going
15 to get credit then -- then we'll get 'em wet. If we're not
16 getting credit for the mitigation then we might as well
17 irrigate them -- or get them in a position where we can get
18 mitigation for 'em.

19 Q. So if your members had known last spring that
20 they were not going to receive credit for drying up acres
21 in 2005, that may have also been dry in 2004, you think
22 some of them would have irrigated last year?

23 A. Oh, definitely. Most definitely. We heard
24 enough -- we heard enough from our membership about --
25 about the land out of the ground that they most definitely

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1 Q. So shutting off the endgun would not result in
2 additional water coming out of those nozzles?

3 A. It shouldn't, you know, theoretically mixed.
4 I'm not a -- Idaho Power doesn't think so, because they pay
5 to have those replaced. But the pressure nozzles are in
6 place to take into compensate for different elevations in
7 ground, also. So that's why, theoretically, they'll maybe
8 shut off an endgun. The water -- your main system stays
9 constant with -- with a low pressure system.

10 MR. SNEED: Thank you, Mr. Stevenson. Those
11 are all the questions I have for now.

12 MR. DREHER: Mr. Steenson.

13
14 CROSS-EXAMINATION
15 BY MR. STEENSON:

16 Q. You can turn off the endgun and what happens
17 to the pump?

18 A. You build pressure.

19 Q. This changes the amount of water
20 (inaudible) --

21 A. Right. Or you will be -- under a center
22 pivot, if you shut the endgun off, if you're -- you have
23 the pressure regulators on each drop, and they hold it in a
24 constant range. So you'll shut off the -- you'll shut off
25 the endgun and build pressure -- you'll build more pressure

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1 would have.

2 Q. Did you hear Ms. Yenter's testimony earlier
3 this morning about the effects of shutting off the
4 endguns?

5 A. Yes.

6 Q. And did you hear her testify that, in her
7 experience, shutting off the endguns does not have any
8 effect on the amount of the water diverted from the pump?

9 A. Yes. I heard that -- I heard that testimony.

10 Q. And do you generally agree with that testimony
11 or disagree with that testimony?

12 A. I would probably disagree, uh, for two
13 reasons. One of them is an endgun -- most big endguns are
14 a hundred gallons a minute. Uh, they'll cover, uh -- you
15 know, they will cover a portion of each corner.

16 For example, a standard pivot with a long
17 endgun picks up 127 acres. If you shut the endgun off, you
18 pick up 119 -- 18 or 19, depending on the overhangs. But
19 they -- so you do cut some acreage out of each corner.

20 When you shut off the pivot most -- now, I'm
21 not saying this -- this isn't inclusive of all pivots, but
22 most pivots have low-pressure packages so each -- each
23 outlet has a pressure regulator on it. So if you increase
24 the system pressure they're set -- they're designed to, uh,
25 put the -- put a constant pressure with a nozzle.

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1 at the pump, but the regulator should take in compensation
2 of the --

3 Q. And that's with that kind of a system?

4 A. Right.

5 Q. With what percentage of --

6 A. In Magic Valley I would say it's probably
7 98 percent of the systems, or what they call a "low
8 pressure drop system."

9 Q. And I didn't bring it, and it seems like so
10 long ago that I can't remember what -- in the 2004
11 agreement -- Hall of Mirrors --

12 A. Yeah. Hall of horrors, or whatever you call
13 them.

14 Q. I forget what Magic Valley agreed they'd
15 provide --

16 A. We agreed to provide mitigation. We agreed,
17 as part of a -- you were all there. We were looking for
18 kickers at that time to -- and we agreed to curtail some
19 acreages. So what we did is, we met with our membership.
20 And we don't have the ability to mandatorily say we have
21 got to dry ex number of acres. So we asked our membership
22 voluntarily to get us over the hump.

23 Q. How many acres would you say?

24 A. We ended up -- I think a little over 6800
25 acres.

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1 Q. In 2003?
2 A. Right.
3 Q. And were you able to document that for the
4 Department in submitting the plan in 2005?
5 A. Yeah. We sent out -- we sent out a mailer to
6 the membership. There was, uh -- oh, they filled out the
7 quarter-quarter and the legal description, and, as I
8 remember, a little map of where the acreages might be. But
9 I'm not sure -- I think Cindy verified those with the --
10 verified some acres with the flyover that year, but I'm not
11 sure.
12 Q. Well, what's your explanation for the gap
13 between the 4700 acres recognized and the 7000 acres
14 (inaudible)? Is it the Department look carefully enough at
15 what we submitted?
16 A. Um, I'm not sure about that. That's what
17 we're looking into. Some of those acres that were
18 submitted in the -- in the, uh -- that were used in the
19 '04, were also used in the '02 and '03 plan where we had to
20 drop -- drop our usage.
21 Q. And if -- I guess even the priorities have
22 been asked to speculate about what the members might do if
23 they don't get credit. Are you suggesting that, uh,
24 they -- there are enough of them that, because of not
25 getting the credit that they believe they're due, would

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1 turn back on their pumps so that the groundwater districts
2 would be out of compliance with the Blue Lakes Order?
3 A. Well --
4 Q. Would they then be forced into the Director's
5 hands of involuntary curtailment? Is that what we're
6 talking about here?
7 A. I think that you can say "If they weren't
8 counted then they wouldn't go against us anyway,"
9 because -- if they weren't counted. But I -- I guess, to
10 start with, I -- I hate to speculate what a farmer will do,
11 you know . . .
12 Q. That's what's occurring?
13 A. Right. Right. That's what's occurring.
14 If -- if our acreages didn't count in '05, uh, because they
15 weren't irrigated in '04, then we didn't get credit for 'em
16 anyway. Then what do we got to do to bring 'em back into
17 compliance where we can get credit for 'em?
18 Q. How would you then propose in compliance, in a
19 year in which these otherwise (inaudible) turn on, how, in
20 that year, (inaudible) in compliance (inaudible)? How does
21 it make up for the difference?
22 A. For the difference? What I'm saying is, uh,
23 if -- if we were in compliance then we wouldn't worry about
24 getting them wet again. Then this -- I'm speculating on
25 what the farmers might think, because we don't have any

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1 ability to control, you know -- other than by priority.
2 But I guess what I'm saying is if those -- for
3 example, if a farmer, in the Blue Lakes Order, he wasn't
4 able to get credit for -- because of some reason, uh, for
5 the ground he laid out, because of, say, nonirrigation,
6 then I would assume his natural response would be to -- to,
7 uh, solve the nonirrigation problem.
8 Q. Then that farmer's response -- and to make up
9 the difference, he would have to have somebody else do the
10 delivery?
11 A. Right.
12 Q. Or you would have to cover it with mitigation;
13 is that correct?
14 A. That's in a sense --
15 Q. Is that how it's going to work --
16 A. Well, I don't know how it's gonna work.
17 Because if it counted, then that's what we have counted.
18 But if it didn't count and it's not going to count, I don't
19 know how you would -- I don't know how we would work
20 through that.
21 Q. I guess what I hear in your testimony here
22 is -- and what's being suggested, is that the farmers --
23 you and the other witnesses have been answering the
24 farmers' reaction is not very happy --
25 A. Well, yeah.

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1 Q. -- right? They're not very happy about not
2 having their acres count. And so their reaction is "We're
3 going to turn around and (inaudible) --"
4 A. Well, no, their reaction is "If my acres
5 didn't count, what do I have to do to make them count?"
6 Q. Okay. So the reaction is "I'm not happy. I'm
7 going to turn on this coming year." And the effect that
8 has on the compliance of the Director's Order
9 (inaudible) --
10 A. Well, I don't know -- I don't know that we
11 would go to that extent. But if -- if an acreage -- for
12 example, if an acreage didn't count, then, uh -- then we
13 might as well irrigate it.
14 Did that make a little better -- am I clear on
15 that?
16 Q. Well (inaudible) --
17 A. No.
18 Q. Blue Lakes receiving 108 cfs has a low of 197
19 cfs in one, that reaction is not (inaudible)?
20 A. I understand.
21 MR. STEENSON: No more questions.
22 MR. DREHER: Mr. Simpson.
23
24
25

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1 CROSS-EXAMINATION

2 BY MR. SIMPSON:

3 Q. Mr. Stevenson, could you look at Exhibit 1, if
4 you would, and the last two pages on that exhibit.

5 Have you had an opportunity to look at that
6 (inaudible) on the next page?

7 A. On which page?

8 Q. Well, both those pages.

9 A. 6 and 7?

10 Q. Yes.

11 A. Okay. I've -- I've looked at them.

12 Q. Okay. And obviously, they're both (inaudible)
13 to North Snake and Magic Valley --

14 A. Uh-huh.

15 Q. -- acreage, correct?

16 A. Uh-huh.

17 Q. So with respect to the eligibility code No. 4,
18 and moving across that --

19 A. Uh-huh.

20 Q. -- is that -- I don't -- it appears to be
21 1777.3 acres submitted --

22 A. Uh-huh.

23 Q. -- (inaudible) verified?

24 A. Uh-huh.

25 Q. Now, moving down to the explanation on the

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1 Q. Okay. And with respect to item No. 5 on the
2 eligibility code --

3 A. Uh-huh.

4 Q. -- the 4,095 acres identified here as
5 nonirrigated in '04 --

6 A. Uh-huh.

7 Q. -- and '05 are not eligible?

8 A. Uh-huh.

9 Q. Those, then, are acres that were not put into
10 the set-aside program?

11 A. Well, I think that's where our data gap is. I
12 think we had some acres that were put in, but some of that
13 didn't get put together as we put in our plans last year.

14 Q. But it's still information that you haven't
15 yet submitted to the Department?

16 A. That's correct.

17 Q. With respect to those interim stipulated
18 agreements --

19 A. Uh-huh.

20 Q. -- and, as I recall, those were agreements to
21 reduce the amount of water being pumped out --

22 A. Uh-huh.

23 Q. -- and that would be verified through PCC --

24 A. Uh-huh. It was kilowatt hours in the
25 district, I think. I -- you were there, too.

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1 code it indicates "Nonirrigated in 2004 or 2005, enrolled
2 in the Magic Valley groundwater 2004 set-aside"?

3 A. Uh-huh.

4 Q. Do you see that reference?

5 A. Yeah.

6 Q. Can you explain to me what the 2004 set-aside
7 exemption records to -- what you just described as the
8 Hall of Mirrors agreement --

9 A. Yes. Yeah.

10 Q. So in order to comply with that 2004 Hall of
11 Mirrors agreement, your folks set aside either -- well,
12 either 1777 as submitted or 1514 as verified?

13 A. We actually had, I think, about 6800 acres
14 that we had submitted in that one, but I think we have a
15 data gap between us and Cindy on that.

16 Q. And is that information that you've now
17 submitted to her?

18 A. I think we're in the process of submitting it
19 to her.

20 Q. But as of today you have not --

21 A. That's correct.

22 Q. -- reconciled the difference to what she has?

23 A. We have -- not only, I think, on the issue of
24 that, there's also some other issues on that I think that
25 we're going to submit to Cindy.

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1 Q. (inaudible) -- I don't recall.

2 A. It was done off power. I remember we had a
3 limit on how many kilowatt hours. And we'd used some --
4 some base years --

5 Q. Right.

6 A. -- back --

7 Q. '97, '98 (inaudible)?

8 A. Yeah. '97, '98, '99, somewhere in there.

9 Q. But those were not naturally based upon drying
10 up (inaudible) acreage where the reduction in kilowatt
11 hours --

12 A. Right. And those were -- those were
13 accomplished through, uh, some drying up of acres. Uh, you
14 know, there was places -- I know guys they'd shut their
15 corners off and shut a booster pump up. Some of them, uh,
16 curtailed pumping, you know, for example, fall watering,
17 stuff like that.

18 Q. Or a change of cropping?

19 A. Yeah. And there was some change of cropping
20 and a few other issues. But we knew we had the heart -- we
21 knew we had to get there from the -- the PCA -- or P --
22 yeah, PCC.

23 Q. Um, and that information has been submitted to
24 the Department?

25 A. Yeah. Those -- those were submitted, I think,

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<p>1 in 2000. In fact, the Department gets those -- that 2 information before we do from Idaho Power. 3 MR. SIMPSON: That's all the questions I 4 have. 5 MR. DREHER: Mr. Sneed, Redirect. 6 MR. SNEED: I have nothing further. 7 MR. DREHER: All right. The witness is 8 excused. 9 So if I understand, you have got one more to 10 go. We will take a ten-minute break and then we'll finish 11 up. 12 (A recess was taken.) 13 MR. DREHER: All right. Mr. Fereday. 14 Mr. Rassier, Mr. Steenson, we're ready to 15 begin. 16 All right. Mr. Fereday. 17 MR. FEREDAY: We call Dr. Charles Brendecke. 18 MR. DREHER: Dr. Brendecke, if you could raise 19 your right hand. 20 21 CHARLES M. BRENDECKE, 22 having been duly affirmed under oath, testified 23 as follows: 24 25 MR. DREHER: Thank you. You may be seated.</p> <p style="text-align: right;">Page 189</p> <p style="text-align: center;">ACCURATE COURT REPORTING, INC. (208) 938-0213 FAX (208) 938-1843</p>	<p>1 Modeling Committee. 2 Q. Did you hear Dr. Wylie speak about the 3 relative benefits of shutting off a well and keeping it off 4 for one season, as opposed to keeping it off for multiple 5 seasons? 6 A. I did hear that, yes. 7 Q. I note that we have Exhibit 6 here that I 8 believe relates to that. 9 Can you tell us what that is? Let me make 10 sure you have the . . . 11 A. This is an example of the effects of drying up 12 some land down in the -- near the Clear Springs Snake River 13 Farm area up on the rim. Water right WR367508 B was one 14 that was not allowed as credit as a dry-up acre, because it 15 wasn't irrigated in 2004 or -- and wasn't in a plan in 16 2004. Those were the numbers that -- or those were the 17 reasons stated for not allowing it. 18 And so the -- the point of this analysis was 19 simply to demonstrate the benefit that it has to that 20 reach -- the Buhl's Thousand Springs Reach. If it had been 21 irrigated in 2003, but then dried up in 2004, but not put 22 in a plan in 2004, it would -- and it wasn't irrigated in 23 2005. 24 So if it continued to not be irrigated it 25 would have the accumulated benefit shown in the -- on the</p> <p style="text-align: right;">Page 191</p> <p style="text-align: center;">ACCURATE COURT REPORTING, INC. (208) 938-0213 FAX (208) 938-1843</p>
<p>1 Begin by stating your name and address, please. 2 DR. BRENDECKE: My name is 3 Charles M. Brendecke. My work address is 1002 Walnut 4 Street, Boulder, Colorado. 5 6 DIRECT EXAMINATION 7 BY MR. FEREDAY: 8 Q. Dr. Brendecke, Exhibit 5 is your resume. Is 9 that reasonably current? 10 A. It's reasonably current. It's probably from a 11 submittal of a year ago or so. I have a Idaho professional 12 registration, at this point, that's not shown on here. 13 Q. And what is that Idaho registration? 14 A. Professional Engineer registration. 15 Q. Okay. What is your familiarity with the 16 subject matter of the Blue Lakes and Clear Springs delivery 17 calls and the orders that have been issued in those cases? 18 A. I've been involved in, uh, I would say the 19 process of looking at these Orders and helping the 20 groundwater districts develop their response to them over 21 the last several years. 22 Q. Were you involved, also, in the development of 23 the Model or the Model calibration effort that Dr. Wylie 24 discussed earlier? 25 A. Yes. I was one of consultants present on the</p> <p style="text-align: right;">Page 190</p> <p style="text-align: center;">ACCURATE COURT REPORTING, INC. (208) 938-0213 FAX (208) 938-1843</p>	<p>1 green line on this graph, uh, versus what would be the case 2 if it were just curtailed this year. And the point being 3 that something that's been off for three years has a 4 greater benefit to the Reach than something that's been off 5 for only a year. 6 If we looked at the actual cfs, or flow rate, 7 rather than the cumulative gain, it would have a similar 8 sort of trend, but there would be more amplitude changes on 9 it because it would be going on and off in more relation to 10 the pumping during the irrigation season and being off in 11 the wintertime. You can see that's in a subdued form on 12 this graph, because it's a cumulative graph. 13 Q. Did you hear the testimony by several 14 witnesses concerning this 2004 issue? That is to say the 15 issue as to the disqualification of a well for credit 16 unless it was being pumped in 2004? 17 A. Yes. There has been quite a bit of discussion 18 about that. 19 Q. And the comments by, I believe, Mr. Minchey 20 and Mr. Stevenson concerning their efforts to more 21 accurately, perhaps, catalog the wells that have been off 22 for a period of time and, therefore, were not irrigated in 23 2004? Do you remember that? 24 A. Yes. It sounds like they -- there's at least 25 the possibility of better documenting that some of those</p> <p style="text-align: right;">Page 192</p> <p style="text-align: center;">ACCURATE COURT REPORTING, INC. (208) 938-0213 FAX (208) 938-1843</p>

1 that were off were in mitigation plans or set-asides.
2 **Q. If the groundwater users are able to document**
3 **some of those, I take it, then, that depending on the**
4 **length of time that those wells actually had been off, they**
5 **would be shown along this green line?**

6 A. Or something similar to it, yes.

7 **Q. Okay. I'd like to have you refer to**
8 **Exhibit 7.**

9 **Could you tell us what this is, please?**

10 A. Exhibit 7 is an excerpt of the Water District
11 01 storage report for 2005. I downloaded this from the
12 District 01 Website, I think, on Thursday last week. This
13 is not the entire report. It's the report that -- it's the
14 portion of the report that speaks to storage allocations
15 and storage deliveries to surface water users in the
16 Blackfoot to Milner Reach.

17 About three pages back is Table 23. It's a
18 similar stored water accounts table that's prepared every
19 year for various Reaches. This particular table, No. 23,
20 contains those surface water users in the Blackfoot to
21 Milner Reach. And if you look on the left, there are the
22 names of those diversions, and you'll see "Northside
23 Twin F" at the bottom, which is the Northside Canal
24 Company.

25 And if you then read across on this table

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1 assigned to Northside Canal for Water District 130
2 conversions.

3 And then there's another adjustment of 249
4 acre-feet that's a natural flow correction. I haven't
5 really dug into that too much. But the 40,982 was
6 delivered to the Northside Canal Company so that it could
7 provide water to the conversion acres in the Sandy Pipeline
8 down in Water District 130.

9 **Q. Okay. Have you reviewed Exhibit 3? And maybe**
10 **you'll want to take a look at Exhibit 3.**

11 **I take it there is a relationship between**
12 **Exhibit 3 and Exhibit 7?**

13 A. Yes, there is. If you look at the last column
14 on Exhibit 3, down near the bottom where it sums up the
15 deliveries in acre-feet are 31,481, then there applies a
16 30 percent loss ratio, and it gets to 40,926, roughly,
17 acre-feet total with the loss. That corresponds generally
18 with the note "AR" on the storage account table that showed
19 40,982 exchanged to IGWA and assigned to Northside for
20 conversions. I can't tell you exactly why it's 49,082
21 instead of 49,025.

22 **Q. Okay. So the figure of 9,400 some odd**
23 **acre-feet of delivery losses is reflected in Exhibit 3. Is**
24 **it also reflected somehow in Exhibit 7? I take it, it is**
25 **not?**

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1 you'll see that at the beginning of the season the
2 Northside Canal Company was allocated 838,530 acre-feet of
3 storage water. This is what accrued to their storage water
4 rights in 2005. They then -- a couple columns over to the
5 right from that you'll see that they diverted -- or they
6 used 514,262 acre-feet out of that allocation, which would
7 leave them 324,267 over about the 6th column.

8 Then there's a column called "adjustments,"
9 and in that column it says "40,733 acre-feet." And there's
10 a note "AR" that explains what that forty thousand plus
11 acre-foot adjustment is.

12 **Q. Now, is this the kind of information you**
13 **routinely rely on in carrying out your duties for the**
14 **groundwater users?**

15 A. Yes. I've looked at a lot of these stored
16 water accounts tables back to earlier years, as well.

17 **Q. Have you found them to be reliable?**

18 A. That's what we all rely on are these
19 accounting records from Water District 01.

20 **Q. And what is AR? What is its significance to**
21 **you?**

22 A. If you go back a couple more pages, then,
23 there's an explanation of each of these footnotes. And on
24 the last page, if you go down to note AR, that adjustment
25 consists of 40,982 acre-feet of water provided by IGWA and

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1 A. Well, 40,000 -- in Exhibit 7, what Exhibit 7
2 tells me is that 40,982 acre-feet were diverted by
3 Northside for delivery to conversions. What Exhibit 3
4 tells me is that 31,481 acre-feet were actually delivered
5 to conversions in Sandy Pipeline. And the difference,
6 which would be, roughly, 9,500 acre-feet of water,
7 disappeared somewhere between the Northside Canal headgates
8 on Milner Lake and the diversion points -- or the delivery
9 points at Sandy Ponds and the conversion sites.

10 **Q. So what, in your opinion, happened to that,**
11 **roughly, 9500 acre-feet?**

12 A. Well, I would expect that the vast majority of
13 it became a conveyance loss and seeped into the ground
14 through the bottom of the canal.

15 **Q. Okay. Does it appear to be delivered to other**
16 **shareholders for consumption by those shareholders?**

17 A. Not according to these delivery records by the
18 Northside Canal Company. I don't have any information that
19 suggests it was delivered to somebody else. I have not
20 seen any information that suggests it was delivered to
21 anybody else.

22 **Q. And before we go on to Exhibit 8, let's**
23 **revisit Exhibit 6. Was this exhibit prepared at your**
24 **direction or by you?**

25 A. Yes.

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1 Q. And what data was used to generate this chart?
2 A. We used the data from the -- actually, from
3 the spreadsheet that was prepared by the Department
4 describing the evaluation of the conversions. And we
5 applied the same methodology the Department has done for
6 evaluating dry-ups, which is to calculate the consumptive
7 use as the difference between precipitation and ET in that
8 model cell.

9 This happened to be a handy example, because
10 this entire parcel lies within the single model cell so it
11 was an easy one to do. So it's a combination of
12 information from that spreadsheet and from the basic model
13 files that we obtained from the Department for various
14 purposes.

15 Q. So your firm runs the ESPA model for these
16 kinds of purposes?

17 A. We do.

18 Q. Would you refer to Exhibit 8, please, and
19 identify that?

20 A. Exhibit 8 is a Water Management and
21 Conservation Plan for the Northside Canal Company prepared
22 by the company with some help from the Water User
23 Association and CH2MHILL. It's dated December 2003. We
24 obtained this document as part of the disclosure process
25 in -- in our looking through various documents in the

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1 Q. Is that 30 percent a reasonable estimate of
2 seepage losses from the Northside Canal, in your opinion?

3 A. Well, based on the other information I've
4 seen, it probably underestimates the losses in the
5 Northside Canal.

6 Q. What other information have you evaluated?

7 A. Well, there's a table in this report that gets
8 to this specifically, if I can find it in here. Page 33.

9 Q. What does that table address?

10 A. Well, based -- if you do the background
11 reading in the document, this is a water budget analysis
12 that was done as part of preparation of this report.

13 Q. Was that Table 32 in the report?

14 A. Table 32 is what I'm looking at, yes. And the
15 water budget analysis was done for three different example
16 years; a wet year, an average year, and a dry year. And
17 this is sort of a summary of that water budget analysis.

18 And if you compare the amounts delivered there
19 in the third row to the amounts diverted up in the top row,
20 you'll see that the loss is somewhere near half of what's
21 diverted.

22 Now, some of that goes to groundwater
23 recharge. That's explained elsewhere in the report. The
24 21,000 goes into some recharge ponds. That's really --
25 still ponds that contribute to recharge. So that might

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1 delivery call matter involving the Surface Water Coalition.
2 Q. Okay. Does this document address canal
3 seepage, conveyance losses, spills; issues like that?
4 A. It does. There are a few tabulations and
5 discussions in here about those aspects of canal operation.
6 And we might just look in particular at a couple of those.
7 If you want to go to Page 40, there's a discussion on
8 Page 40 in the middle on management of return flows. And
9 it talks about the canal company's goal to reduce return
10 flows to the Snake River by using sediment ponds and
11 wetlands, pump EX systems, and the like.

12 And it indicates that the canal company
13 measures return flows that are discharged into the
14 Snake River at 13 locations. And it states that in 2002
15 return flows that were not intercepted by these sediment
16 ponds and wetlands approximated 45 cfs. And over a 200 day
17 irrigation season that's about 18,000 acre-feet.

18 Q. That compares to how many acre-feet diverted
19 into the canal?

20 A. Roughly, a million.

21 Q. You have looked, haven't you, at the
22 documentation -- or the -- at least references to the
23 30 percent conveyance loss number that has been discussed
24 in this hearing today?

25 A. Yes.

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1 have to come off the top of that calculation.

2 But, if anything, the data in this table
3 indicates to me that the losses in the canal system are
4 sufficiently high that it's reasonable to think that none
5 of that 30 percent -- the 9,500 acre-feet that we have been
6 talking about here that disappeared between the headgate
7 and the deliveries, I think it's vastly more likely that
8 that disappeared in the form of canal losses than got
9 delivered to other shareholders in the system. Because the
10 deliveries here -- uh, the losses, based on the information
11 in this table, are actually higher than that 70 -- or that
12 30 percent figure.

13 Q. Is it reasonable to think that this entire
14 amount of loss -- this 30 percent, or 94- and 9500 feet,
15 could have been spilled back to the river?

16 A. Uh, no. They would have measured that. And
17 it's not in Northside's interest to have that kind of spill
18 going on. They have indicated that their spills, in 2002
19 anyway, were on the order of a couple percent of their
20 diversion.

21 Q. Others today have talked about the water being
22 commingled in the canal. If there were spills of this
23 conveyance loss figure, what would you expect them to be?

24 A. Well, I would think -- you know, the water
25 molecules are all mixed in the canal. It's not some

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1 selective molecules that are spilled. You know, what
2 molecules are spilled are the ones that are spilled. And
3 so I would apply the same fractional spill percentage to
4 that number as I would to the rest of the water from the
5 system, which is, you know, one or two percent.
6 Q. Is one or two percent based on the 18,000
7 acre-foot versus one million --
8 A. Roughly, that's correct.
9 Q. -- acre-foot? Okay.
10 There have been references today to the Order
11 issued by the Director on June 7th, 2005, and specifically
12 to the statement that -- I'll quote here "When the canals
13 and ditches of Northside are fully charged and water is
14 already seeping into the ground, the addition of surface
15 water on top of the existing surface water flowing in the
16 canals and ditches will not significantly increase the
17 seepage from the canals and delivery ditches."
18 Do you remember that?
19 A. Yes.
20 Q. Do you have an opinion about whether that
21 assumption cancels your conclusion earlier that the vast
22 majority of this 9500 feet seeped into the aquifer?
23 A. Uh, no. The molecules are all commingled in
24 the canal. There's no way to selectively have the
25 conversion deliveries floating on top of the other

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1 molecules. When a canal leaks, it will leak all the
2 molecules equally. It doesn't discriminate.
3 Q. Well, one of the things that I'm wondering
4 about is just the concept that both Ms. Yenter and
5 Dr. Wylie testified to, which is the concept that this
6 94- -- or 9500 acre-feet was put into the canal. And the
7 question, then, was "Where did it go?" And I didn't feel
8 like have a complete answer to that.
9 Do you feel that your view is any more
10 accurate based on what you have reviewed?
11 A. Well, in -- I think it does. We know that
12 some of it got delivered, because that was measured. So we
13 know where some of it went. And since all the waters in
14 the canal -- or all of the molecules of water in the canal
15 are commingled, I would expect that those -- that 9400
16 acre-feet suffered the same fate that the, roughly, 400,000
17 acre-feet suffered between the total supply and that
18 delivered to the farm here in Table 32, which is largely
19 seepage into the ground.
20 Q. In the June 7th Order in the Blue Lakes
21 delivery call case, the Department also states that IGWA
22 did not provide any information about the actual physical
23 seepage of surface water from the Northside Canal to
24 groundwater resulting from delivery of surface water to the
25 conversion acres in the Sandy Pipeline. The Department

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1 goes on to say that they, the Department, cannot determine
2 the amount of replacement credit, if any, attributable to
3 seepage.

4 Do you have any comment about that conclusion
5 in the Order?

6 A. Well, it would be physically impossible to
7 distinguish the seepage that occurs from the water diverted
8 for conversions from the seepage that occurs from any other
9 water going down the canal. So it's just not possible to
10 measure which of those molecules that have seeped out the
11 bottom of the canal are from the conversion delivery and
12 which are from the rest of the water running in the canal.

13 Q. So is it, in your opinion, a reasonable
14 request, or would it be a reasonable request to require the
15 groundwater users to go beyond the kinds of materials that
16 you've already identified here to conduct some sort of a
17 seepage study on that 40,000 some odd acre-feet?

18 A. Well, first of all, they couldn't do the
19 seepage study without the cooperation of the Northside
20 Canal Company. They're not -- they're just not in a
21 position to be able to go do their own seepage study of the
22 Northside Canal, because it requires all the information of
23 all the water that was ever delivered -- that was delivered
24 to any of the delivery points on the Northside, and all of
25 the spill numbers, and whatever was put in the spill pond.

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1 And this is information that the groundwater districts
2 generally don't have. So there's one obstacle to doing
3 anything more on their own.
4 And it's not clear why they would want to do
5 that, because this kind of information is already here in
6 this report. The Northside Canal Company could conceivably
7 have other seepage studies that they've done. I've asked
8 Ted about that and been unable to locate them. But they
9 have done them in the past.

10 I guess the, uh -- then the second point, to
11 sort of get to the rest of the question, it seems like it's
12 just not feasible -- technically feasible -- for the
13 groundwater districts -- even if they did have the complete
14 cooperation of the canal company, all they would be able to
15 do is calculate the total loss from the canal. They could
16 not differentiate the loss associated with the water that
17 they've provided for delivery to conversions from any of
18 the other losses, or any other water that's being lost in
19 the canal.

20 MR. FEREDAY: No further questions.
21 MR. DREHER: Mr. Steenson.

22 CROSS-EXAMINATION
23 BY MR. STEENSON:

24 Q. Dr. Brendecke, you downloaded this Exhibit 8
25

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1 from the Internet?

2 A. No.

3 Q. How did you obtain it?

4 A. It was one of the documents produced in their
5 requests for information in connection with the Surface
6 Water Coalition call.

7 Q. And I have not seen this before, so I'm going
8 to ask for a little bit of your help in understanding it.

9 Turn back to Page 28. I believe that's at the
10 beginning of the section in which Table 32, to which you
11 referred here -- get me, first, to quantities in total
12 water supply and the aggregate of quantities diverted from
13 Northside Main, Northside Crosscut, EA, A and Brine
14 (phonetic) pump diversion. There are several different
15 portions of the overall Northside Canal Company system.

16 Do you see that?

17 A. Yes.

18 Q. Then referring back to Table 32 at Page 33,
19 that refers to polo (phonetic) water supply?

20 A. Yes.

21 Q. You're not assuming that that's requested
22 water diverted since it's only to the Northside canal, are
23 you?

24 A. Well, the amounts of water diverted through
25 the PA lateral, the A lateral, and the Brine (phonetic)

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1 Q. Do you know which?

2 A. No. There's no way to tell.

3 Q. I'm sorry, there's no way to tell where --

4 A. Which acre-feet of conversion water went
5 through which of these points of conversion. Except the PA
6 lateral, the A lateral, and the Brine pump have negligible
7 contributions to flows in the Main Canal.

8 Q. Well, are you saying it's not known -- the
9 Northside Main Canal, is that one diversion from the river?

10 A. The Northside Main Canal is one diversion
11 point.

12 Q. And the Northside Crosscut, that's a different
13 diversion --

14 A. That's a different diversion point.

15 Q. And it's not known from which of these
16 diversions the conversion water is diverted? Is that what
17 you're saying?

18 A. In the Water District 01 accounting all of
19 these are combined to reflect the Northside Canal
20 diversion.

21 Q. So do you think it would make a difference if,
22 say, in a year a hundred percent of the water was diverted
23 to the Northside Main Canal, or is that -- at zero is the
24 Northside Crosscut, or that essentially (inaudible) occur?

25 A. I don't think it would matter. Because if it

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1 pump are quite small.

2 Q. Okay. And then --

3 A. The Northside Crosscut actually is waters
4 diverted into the Milner-Gooding Canal and then fed down
5 into the Northside Main Canal.

6 Q. Okay. So that -- I guess, you're getting that
7 from Table A2, a (inaudible) or so from the back.

8 A. Yes. Table A2 has a breakdown for 1997 of the
9 amount that was diverted in these different diversion
10 points.

11 Q. And it has the same total for the wet year of
12 a million 66 thousand 564 acre-feet (phonetic) in the lower
13 right hand, right?

14 A. Right.

15 Q. So when we look at overall efficiency, system
16 efficiency, these percentages really don't reflect the
17 efficiency through the Northside Canal itself, do they?

18 A. Well, it looks at all of their sources.

19 Q. Well, the conversion water we're talking about
20 gets diverted where and then in basically what portion of
21 the system?

22 A. I expect that it would be diverted through the
23 Main Canal and/or the Northside Crosscut, because of the
24 diversion -- because most those conversion points are
25 downstream of where the Crosscut feeds into the Main Canal.

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1 goes down the Crosscut, it goes down -- you know, a
2 distance down the Milner-Gooding Canal, and then it ends up
3 back in the Northside Main Canal.

4 Q. And the Northside Crosscut discharges into the
5 Northside Main --

6 A. Yes.

7 Q. -- Is that how that works? And how long is
8 the Northside Crosscut to the point where it discharges
9 into the Northside Main Canal?

10 A. Oh, I can't tell you that number.

11 Q. You haven't looked it up?

12 A. Well, I probably have, but I can't remember
13 what it is. It's not a great distance.

14 Q. And how long is the Northside Main?

15 A. All the way to the end.

16 Q. Well, the portion that matters in terms of the
17 seepage, you must have looked at that?

18 A. Well, the delivery points -- these conversions
19 are spread out in the canal system. And some of them feed
20 off of laterals that divert near the headgate of the
21 Northside Main Canal. And some of them are served from
22 laterals that divert off the Main Canal farther downstream.

23 Q. Is the seepage then that results from the
24 delivery of conversion (inaudible), depending on where
25 these delivery points are along the Main?

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1 A. Well, water is lost -- you know, each mile of
2 the canal has a water loss associated with it. So from a
3 physical perspective -- you know, a delivery down to the
4 far end of the canal, you know, entails more loss than a
5 delivery at the head end of the canal. But canal companies
6 don't operate that way. They share the loss equally among
7 all their shareholders. And the loss that's been applied
8 to the deliveries for conversions was the same regardless
9 of where those conversions were located.

10 Q. And I take it you looked at the following
11 Page 34 under bullet B (phonetic)?

12 A. Page which?

13 Q. Page 34 under Exhibit 8 (inaudible).

14 Do you agree with that statement with regard
15 to system losses encasing the length of the (inaudible)
16 system?

17 A. Yes, I generally agree with that.

18 Q. And we're not concerned here with so much
19 Northside Canal Company's accounting with respect to their
20 shareholders, we're concerned with loss from a canal; is
21 that correct?

22 A. Well, what we provided was -- or what the
23 groundwater districts provided was, roughly, 41,000
24 acre-feet at the headgate. And we got 31,000 acre-feet
25 delivered to Sandy Ponds. And the rest of that went, we

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1 of a water right on -- based on whatever information you
2 would like (inaudible)?

3 A. For any given assumed change in water
4 management the Model will predict what the future impact
5 would be of that change.

6 Q. So in terms of -- another way of -- you
7 described this in terms of projecting benefits. This also
8 projects current and future impacts of diversion under the
9 (inaudible)?

10 A. Well, you could -- you could -- for example,
11 if this -- if this was the impact of having turned this
12 particular well on in April of 2004, versus having turned
13 it on in April of 2006, then this could just as well be a
14 graph of the impact on the spring. This is -- you know,
15 the graph is meant to show the -- the increase in the reach
16 gain from nonpumping starting in April of 2004, versus
17 April 2006.

18 Q. And (inaudible) future impact somewhere,
19 correct?

20 A. I guess I'm not understanding your question.

21 Q. Well, I think I'm just rephrasing what you
22 said. If you turned this pump off in April 2004, you would
23 have 30 less acre-feet if you -- you know, this measures
24 the impact to the springs from this well; does it not?

25 A. It does reflect the impact on the springs from

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1 believe, to conveyance losses.

2 Q. Based on 30 percent of (inaudible)?

3 A. That's the assumption that the Northside Canal
4 Company applied to our deliveries, yes.

5 Q. Now, with respect to Exhibit 6, this water at
6 367 (inaudible) AP (phonetic), what is its priority date?

7 A. I can't tell you off the top of my head. It
8 was picked as just an example of the timing impact of
9 dry-up for having occurred --

10 Q. Do you know --

11 A. -- in earlier years, rather than this year.

12 Q. Do you know how close to the rim it is? What
13 its approximate distance from the rim is?

14 A. I think this one is fairly close to the
15 springs.

16 Q. So if this were a -- with respect to the
17 Blue Lakes Order and the 1972 priority right, this water
18 right may very well be subject to curtailment at this time
19 or within the next three years?

20 A. It might. I can't remember what the priority
21 date this water was. I didn't pick it for any sort of
22 priority-related reason, I picked it just as a physical
23 example of timing impact.

24 Q. And it looks -- it sounds to me like you are
25 confident that you can project into the future the effect

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1 this 14 acres served by that well. The well may serve
2 other acres, as well. This was a parcel offered as a
3 dry-up.

4 Q. Now, do you know with respect to this water
5 right whether it was covered by a mitigation plan in '04?

6 A. This was a piece -- this was a parcel that was
7 disqualified as being not irrigated in 2004, and not in a
8 plan in 2004.

9 Q. So this -- this particular water right didn't
10 meet the criteria?

11 A. Didn't meet -- well, apparently, at least
12 based on the conclusion of the Department.

13 Q. Now, were you involved in a preparation of the
14 groundwater districts' mitigation plan in '05?

15 A. Yes.

16 Q. And you have been here, I'm assuming,
17 throughout the testimony, so you're aware that that plan --
18 the plan that IGWA submitted, proposed, was to mitigate by
19 drying up acres that were irrigated in 2004; is that
20 correct?

21 A. I think that was one component of the plan.

22 Q. In terms of then, looks like, one component
23 you mean the voluntary curtailment component, correct?

24 A. Yes.

MR. STEENSON: I have no further questions.

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1 MR. DREHER: Mr. Simpson.

2 MR. SIMPSON: Thank you.

3
4 CROSS-EXAMINATION

5 BY MR. SIMPSON:

6 Q. Dr. Brendecke, by providing us with Exhibit 6
7 then, which shows the effect of drying up the 14 acres by
8 running that right through the groundwater model, are you
9 then advocating your support for the groundwater model and
10 the modeling effects that it provides?

11 A. I would say that the groundwater model is the
12 best tool we have right now for evaluating these impacts.

13 Q. So as you sit here today you don't have any
14 reasons to disagree with the Model or its calibration?

15 A. Well, I think there are, obviously -- any
16 effort like this, no matter how much money or time you put
17 into it, there's always something else you could do a
18 little bit better. But I think it's -- given the resources
19 and the effort that went into it, it's as good as we've got
20 right now.

21 Q. So in summary, what you've described here for
22 us is, in your view, that the groundwater districts should
23 be provided credit for those seepage losses associated with
24 the water that they acquired and had delivered down to the
25 Northside Canal Company?

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1 the losses associated with canal company operations, and
2 canal company diversions -- and their records are in your
3 hands, not in our hands. So to require the groundwater
4 districts to undertake seepage studies with respect to the
5 seepage associated with their deliveries or their water may
6 require (inaudible)?

7 A. I think it's -- I think it's unduly burdensome
8 and very difficult for them to do.

9 Q. So rather than have them conduct those
10 studies, you're an advocate for the Department accepting
11 the information within Exhibit A as complete as regarding
12 the seepage losses which should be provided proportionately
13 to the water provided by the groundwater users?

14 A. I think that the losses charged to those
15 deliveries by the Northside Canal Company are reasonable
16 representations of the losses in the system. I think that
17 there's evidence that losses may be higher than that. And
18 there's ample evidence that that amount of water -- the
19 9500 acre-foot -- 9500 acre-feet could easily get them lost
20 to conveyance in the system, and that we should get credit
21 for it.

22 Q. With respect to, for example, the proposal for
23 this year with respect to recharge in Wilson Lake and
24 through the Northside system and to Wilson Lake, would it
25 be your belief that there should not be studies conducted

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1 A. Yeah -- yes.

2 Q. So would it be your view that that 30 percent
3 figure that you described is a reasonable conveyance loss
4 for the Northside system?

5 A. It's the number that the Northside Canal
6 Company has applied to our deliveries.

7 Q. But in your view is it a reasonable figure for
8 the Northside system?

9 A. Well, the other data that we looked at
10 suggests that the losses might actually be a little higher
11 than that.

12 Q. So again, 30 percent, is that a reasonable
13 conveyance?

14 A. I think it's reasonable.

15 Q. And are you also testifying that you believe
16 that it's unreasonable for the groundwater districts to
17 perform seepage studies on the Northside systems to support
18 their seepage loss calculations that are perhaps
19 (inaudible) for?

20 A. Are you asking me if it's unreasonable to
21 expect the groundwater districts to do seepage loss studies
22 on the Northside Canal Company?

23 Q. Well, I'm trying to paraphrase what I thought
24 you said. With respect to Exhibit A, did you say that the
25 information that's already here, which describes generally

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1 regarding what duties might be attributed to that
2 additional water for recharge?

3 A. Well, I don't know exactly where all of that
4 stands right now. I know there's been some discussion of
5 whether there's adequate measurement to discern what the
6 losses are from that operation.

7 Q. And that would be part of the senior study, if
8 one were conducted, that would be determining what those
9 losses were through that additional water in Wilson Lake?

10 A. I think that's part of the aim, yes.

11 Q. And unless the Northside Canal Company had
12 documentation from past operations which identified that
13 type of information, would it be appropriate for that
14 information to be gathered through studies?

15 A. Uh, yes. I don't know -- they may well have
16 that information already from just their past operations.
17 That data may be adequate, just as -- you know, as shows up
18 in this other report, Exhibit A. It may be that they have
19 sufficient information already in hand to estimate what
20 those losses are.

21 Q. For the same reason that adding additional
22 water into the system may or may not result in seepage
23 losses equal to (inaudible) of operations; that is what --
24 the 30 percent level of whatever the appropriate level
25 (inaudible).

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1 A. I guess I'm not sure what the question is
2 here.
3 Q. Well, if you add additional water, for
4 example, at Wilson Lake, would you agree that the losses
5 associated with that additional water at Wilson Lake may or
6 may not exceed the seepage on a normal operation at
7 Wilson Lake?
8 A. My understanding is the idea is to actually
9 operate Wilson Lake at a higher level by a foot or two, and
10 that there's a substantially increased loss associated with
11 that higher operating level, because it encounters some
12 additional places where seepage can occur or something like
13 that. I haven't been out there to actually look at it. I
14 know there was a meeting last week about it.
15 Q. And that's where additional studies are --
16 being together would be helpful to identify exactly how
17 much seepage would occur if operations were changed
18 (inaudible)?
19 A. I think that's correct.
20 MR. SIMPSON: That's all the questions I have.
21 MR. DREHER: Okay. Mr. Fereday, Redirect?
22 MR. FEREDAY: No further questions.
23
24
25

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1 A. There certainly are no adjustments shown for
2 any of the other diversion points for the Northside Canal
3 system. The whole entry is applied to the Main Canal
4 system on this table.
5 MR. DREHER: All right. Thank you. I think
6 you're done.
7 MR. FEREDAY: Thank you. Mr. Director, I
8 discussed with Phil at the break the opportunity to provide
9 some written closing argument or brief. And I suggested
10 that we at least would like to have an opportunity to get a
11 transcript potentially in aid of such a submission.
12 MR. DREHER: Okay.
13 MR. FEREDAY: So I would like to at least
14 raise that issue.
15 MR. DREHER: Okay. Before we address that,
16 Mr. Fereday, let me double-check with Mr. Steenson and
17 Mr. Simpson that they don't have anything they wish to
18 present or put into the record at this point.
19 MR. STEENSON: I do not.
20 MR. SIMPSON: No.
21 MR. DREHER: Okay. So, Mr. Fereday, what kind
22 much a time frame did you have in mind?
23 MR. FEREDAY: Well, I was thinking perhaps a
24 week to prepare the paper for submission, but that would be
25 after we get the transcript. And I don't know how long the

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1 VOIR DIRE EXAMINATION
2 BY MR. DREHER:
3 Q. Dr. Brendecke, in terms of one of your
4 answers, I'm not sure that we don't know what facilities
5 the storage water went through based upon the storage
6 report in Exhibit 7. Because it -- Exhibit 7 lists,
7 individually, each diversion point in this Blackfoot to
8 Milner Reach, including the -- I'm not sure how to
9 characterize it, but it includes the Northside Crosscut
10 Gooding Canal and the PA lateral and the A lateral and
11 on.
12 And Exhibit 6 shows that -- at least the way
13 I'm reading it, it shows that all of the surface water that
14 was rented --
15 (Inaudible comment.)
16 MR. DREHER: I'm sorry, what did I say? 6?
17 7. Excuse me. Exhibit 7 shows that all of the surface
18 water that was rented was diverted through the Northside
19 Main Canal, and that none of it was diverted through the
20 other facilities. So I don't know what bearing that may
21 may not have, but it all went through the Main Canal it
22 looks like to me.
23 THE WITNESS: So are you asking that question?
24 Q. (BY MR. DREHER) Well, do you agree that it
25 appears that it all went through the --

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1 getting the transcript would take. If we could get the
2 tapes right away and get them to a court reporter or some
3 other -- a stenographer, then we could get going on that.
4 But that would probably take, my guess, is two to three
5 days; something like that. So maybe one and a half, two
6 weeks; something like that.
7 MR. DREHER: Okay. Let me ask another
8 question of you. Various of the witnesses for IGWA seemed
9 to state that they were working on gathering additional
10 information about certain acres where substitute
11 curtailment occurs on a voluntary basis.
12 Is there some sort of a unified or organized
13 effort of a way to do that and when might that be done?
14 MR. FEREDAY: There is an organized effort, to
15 my knowledge, at least in the North Snake working through
16 "Angie." But I can't -- I can't give you any more
17 information on that, other than to say that I know that
18 they are continuing to work on it.
19 If we could have an opportunity to get back to
20 you within a day or two and provide more information on
21 that, we certainly would appreciate that.
22 MR. STEENSON: If you're leading to the point
23 that perhaps that could feed into this, too, or we could
24 explain what further information we're getting.
25 MR. DREHER: Well, I'm also wondering how all

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1 this affects what we need to for 2006? Of course, there's
2 some unknowns about 2006. You know, we haven't seen a
3 Judgment at this point in Judge Wood's matter. That may or
4 may not affect this.

5 And I don't know how many of the lands that
6 were idled in 2005 -- irrespective of whether you did or
7 didn't get credit, I don't know how many of those lands
8 you're planning to continue to idle in 2006. But assuming
9 that you do wish to file some sort of closing brief of some
10 sort -- I mean, I presume that Mr. Steenson and Mr. Simpson
11 would want a chance to offer some Rebuttal to that, as
12 well, depending upon what's in it.

13 MR. STEENSON: No. It was their suggestion,
14 frankly, though.

15 MR. DREHER: Okay. All right.

16 Mr. Simpson, do you have any --

17 MR. SIMPSON: Well, I take the same position.
18 Unless there's something that's surprising that comes up,
19 then I expect we would respond to it. (Inaudible.)

20 MR. DREHER: Right. Let's see. This is
21 June 5th. So you're -- Mr. Fereday, are you thinking you
22 could file something within two weeks? Is that what you're
23 thinking?

24 MR. FEREDAY: Yes.

25 MR. DREHER: Okay. That would put us at

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1 something. I think that would be the first step is to let
2 you know. And if we had from the 21st to inform you, and
3 then five days after that, maybe till the following --

4 MR. STEENSON: (Inaudible) -- seven days.

5 MR. SIMPSON: Yes.

6 MR. DREHER: But assuming that it's in your
7 hands --

8 MR. SIMPSON: On the 19th, yes.

9 MR. FEREDAY: On the 19th.

10 MR. DREHER: Okay. By then we may know more
11 about how all this is going to be affected by
12 Judge Wood's action. So we'll proceed on that schedule
13 and you'll have until the 19th to file a post-hearing
14 brief. And Blue Lakes and Clear Springs will have seven
15 days to respond, provided they have it in their hands on
16 June 19th.

17 Okay. Is there anything else that needs to be
18 brought up at this point?

19 You know, I -- I ought to just say one -- a
20 couple of things in terms of the Department's handling of
21 this that, uh, you know, I certainly, in the last year,
22 have learned that I'm good at one thing and that's making
23 people mad. So I understand the frustration that the
24 groundwater folks feel when they have paid -- I don't know
25 what you ended up paying for the rental water, but it was

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1 June 19th. That's -- I believe it's -- my reaction is
2 that seems to be -- initially, that's close enough to the
3 June 15th time frame that I had in mind anyway. So we'll
4 give IGWA two weeks to file their -- what did you call it?
5 Was it a closing brief?

6 MR. FEREDAY: Yes. Post-hearing brief.

7 MR. DREHER: Post-hearing brief. And then
8 we'll -- we will at least provide the opportunity for
9 Mr. Steenson and Mr. Simpson to decide whether they want to
10 submit anything in Rebuttal to that, and then we'll issue
11 an Order as soon thereafter as we can.

12 MR. STEENSON: (Inaudible.)

13 MR. DREHER: I'm sorry?

14 MR. STEENSON: We should probably have a
15 time frame for Rebuttal.

16 MR. DREHER: Yeah. If you do choose to Rebut,
17 how long do you think -- I mean, they don't know. They
18 don't see it yet. I don't know if seven days would be
19 efficient or not.

20 MR. SIMPSON: Well, Mr. Director, at least in
21 my view -- the 19th is a Monday?

22 MR. DREHER: Yes.

23 MR. SIMPSON: So if we have it in our hands,
24 at least from my perspective, I would know probably within
25 a day or two whether we were going to have to file

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1 substantial. And, uh, to see that you don't get credit for
2 it I understand it's hard to -- hard for people to take,
3 whether it's through the water that you rented or whether
4 it's acres that you voluntarily set aside.

5 However, I hope your folks understand that
6 when the Department provides an opportunity for you to
7 submit -- or to provide something in lieu of involuntary
8 curtailment, it has to be just as real as involuntary
9 curtailment.

10 And that's -- that's the -- that's the
11 criteria or the underlying principle that we've sought to
12 apply is that if we're going to approve something in lieu
13 of the involuntary curtailment, it has to be grid
14 (phonetic). And that's why we have been conservative in
15 terms of how we've dealt with these issues.

16 But certainly, you know, I appreciate the
17 information that you've provided today and we will
18 thoroughly consider all of it. And if a revised
19 determination is warranted, we certainly will look into it.
20 So I do appreciate that.

21 So in closing, then, the matter won't be
22 considered fully submitted until June 26th; is that right?

23 MR. FEREDAY: That's right.

24 MR. DREHER: And then we will issue an order
25 there just as quickly after that as we can.

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1 The hearing, then, will be concluded now and
2 the record closed, except for the post-hearing brief and
3 any response. And I think we've adequately laid out the
4 time frame. So with that, I appreciate the effort that you
5 went to, to do this, and we will see where we go.
6 Thank you.

7 MR. FEREDAY: Thank you.

8 (Whereupon, the hearing was adjourned.)
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1 REPORTER'S CERTIFICATE

2 STATE OF IDAHO)
3) ss.
4 COUNTY OF ADA)

5 I, JEANNE M. HIRMER, RPR, CSR, (Idaho
6 Certified Shorthand Reporter Number 318) a Notary Public in
7 and for the State of Idaho, do hereby certify:

8
9 That said hearing was transcribed from a CD
10 digital recording, by means of computer-aided transcription,
11 and that the foregoing transcript contains a
12 true record of the said hearing.

13
14 I further certify that I have no interest in
15 the event of the action.

16
17 WITNESS my hand and seal this 15th day of
18 June, 2006.

19 JEANNE M. HIRMER
20 Idaho CSR No. 318, RPR and
21 Notary Public in and for
22 the State of Idaho
23 My Commission Expires 11/18/08.
24

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